

Muhammad Hamidullah and Islamic Constitutional Law

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for the Degree of Master of Arts and Humanities

By  
Nadira Mustapha

The Institute of Islamic Studies  
Faculty of Graduate Studies and Research  
McGill University  
Montreal

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Abstract

Author: Nadira Mustapha  
Title: Muhammad Hamidullah and Islamic Constitutional Law  
Department: The Institute of Islamic Studies, McGill University  
Degree: Master in Arts and Humanities

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The socio-political tranquility of Hyderabad-Deccan preceding 1948 facilitated much educational and cultural advancement. This rapidly developing environment provided Hamidullah with the ideal opportunity for educational growth, having earned five degrees related to the field of law by the age of 28 in 1936. He began writing at age 18, and thereafter he dedicated his life to literary pursuits. Today, he has written over 100 books and 900 articles; he speaks over 20 languages and writes in over 10 languages. Along with one of his major areas of focus, Islamic constitutional law, he has written on a variety of other subject areas, ranging from Islamic theology to Islamic history, from Qur'ānic exegesis to Orientalism.

This thesis attempts to study five books in the field of Islamic constitutional law by Dr. Muhammad Hamidullah in order to provide a sample to judge and analyze his scholarship. Against the background of Hamidullah's historical and political context coupled with his high level of religiosity, the thesis will examine his utilization of the scientific approach throughout his writings. This thesis furthermore looks at the potential reasons he chose the path of study that he did, dedicating his entire life to the literary sphere and to a lesser degree the political sphere. It focuses on Hamidullah's

thought and methodology as they emerged from his social and political background and as he expressed them in his literary achievements. This thesis, therefore, sets out to develop a critical analysis of Hamidullah's works, his philosophical perspective, and his contribution to contemporary scholarship.

Hamidullah has contributed to Islamic scholarship by making available Islamic literature to mixed audiences since he follows the scientific approach, writes in a variety of languages, and covers a wide range of unique topics. Indeed Dr. Muhammad Hamidullah is a well-esteemed scholar of formidable status and prestige in numerous fields of Islamic history.

## Résumé

Auteur: Nadira Mustapha

Titre: Muhammad Hamidullah et la loi constitutionnelle islamique

Département: L'Institut des études islamiques – L'Université McGill

Licence : Maîtrise en lettres et sciences humaines

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La tranquillité socio-politique d'Hyderabad-Deccan avant 1948 a facilité beaucoup d'avancement culturel et éducatif. Cet environnement qui se développe rapidement a donné à Muhammad Hamidullah l'opportunité idéale pour une croissance éducative, dans la mesure où il a mérité les cinq diplômes universitaires qu'il a reçus jusqu'à l'âge de 28 ans, en 1936, dans des domaines connexes au droit. Hamidullah a commencé à écrire à l'âge de 18 ans et dès ce moment il s'est dévoué aux travaux littéraires. Il a écrit jusqu'à date plus de 100 livres et 900 articles. Il sait parler plus de 20 langues et il peut écrire en 10 de ces langues. En outre de sa matière principale, la loi constitutionnelle islamique, il a écrit dans de différents domaines, qui touchaient non seulement la théologie islamique mais aussi l'histoire islamique de l'exégèse Coran à l'Orientalisme.

Dans cette dissertation, on étudiera cinq livres de la loi constitutionnelle islamique écrits par Docteur Muhammad Hamidullah afin de fournir un échantillon pour analyser et juger son érudition. Au fond du contexte historique et politique d'Hamidullah, avec son niveau élevé de sainteté, on examinera l'utilisation de son approche scientifique dans toutes ses écritures. De plus, on étudiera les raisons potentielles qui l'ont poussées à

suivre ses études, en se dévouant au domaine littéraire at au moindre degré au domaine politique. On met au clair, dans cette dissertation, les pensées et la méthodologie de Muhammad Hamidullah exprimées dans ses œuvres littéraires qui émergent de son milieu social et politique. Donc, on propose de développer une analyse critique de ses œuvres, d'examiner son perspective philosophique et sa contribution à l'érudition contemporaine.

Muhammad Hamidullah a contribué à l'érudition islamique en mettant la littérature islamique à la disposition d'un grand public parce qu'il suivait l'approche scientifique, il a écrit en utilisant une variété de langues et il a embrassé un grand choix de sujets uniques. En effet, Docteur Muhammad Hamidullah est un homme de lettres vénérable, d'un statut prestigieux dans plusieurs domaines connexes à l'histoire islamique.

## Acknowledgments

This thesis is the product of a fruitful period of study at McGill University during the years 2000-2001. I wish to acknowledge and express my gratitude to all who assisted, in one way or the other, in the preparation of this thesis. First and foremost, I wish to thank Dr. Muhammad Hamidullah and his niece, Sadida Athaullah, for their permission to write this thesis.

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I am especially indebted to Dr. Yusef Kavachi who introduced me to Muhammad Hamidullah as “the unsurpassed Muslim scholar of the twentieth century.” Without this thought-provoking comment, I may not have focused on Hamidullah for my research. I am also indebted to Dr. Omar Khalidi, Abdul Wahid Hamid, Dr. Sodiq Yoshi, Omer Bin Abdullah, and Muhammad Tahir (Librarian of the American Studies Research Center at Osmania University) for their instantaneous and valuable suggestions. Special thanks are due to the Islamic Society of North America (ISNA) for assisting me in various areas of research and directing me to sources of interest.

I would like to acknowledge the many people who have inspired me in a number of ways throughout the writing of this thesis. Among them are my colleagues, Fauzia Abdalla, Shaema Imam, and Carl Sharif Eltobgui from Montreal, Canada, in addition to Maryam Johnson who I met during my studies and research in the Middle East.

I would like to thank my entire family for their patience and valuable suggestions, especially my brother Gamal Mustapha for his computer-related advice. Last, but most importantly, this thesis is dedicated to my parents, Zolaikha and Waheed Mustapha, for their love, continuous support and encouragement – all of which made this thesis possible.



## Transliteration

The system of Arabic transliteration used in this thesis is that of the Institute of Islamic Studies, McGill University. Common names such as Hyderabad will be written according to the conventional English spellings. The short vowels *fatha*, *kasra*, and *damma* are respectively translated as “a,” “i,” and “u.” The long vowels, *alif* and *alif maqsūra*, *yā* and *wāw* are respectively rendered as “ā,” “ī,” and “ū.” The hamza at the end of a word is represented by an apostrophe. The *tā’ marbūṭa* is transliterated as “a” in the pause form, and “at” in construct form.

ا = a	ض = ḍ
ب = b	ط = ṭ
ت = t	ظ = ḏ
ث = d	ع = ‘
خ = jh	غ = gh
ح = ḥ	ف = f
ج = kh	ق = q
د = d	ك = k
ذ = dh	ل = l
ر = r	م = m
ز = z	ن = n
س = s	و = w
ش = sh	ه = h
ص = ṣ	ي = y

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## INTRODUCTION

### THE PROBLEM, PURPOSE, AND METHOD OF THE STUDY

#### Formation of the Problem

Muhammad Hamidullah, a scholar whose life has spanned every decade in the twentieth century, lives on in the first decade of the twenty-first century. His literary output in several languages, including Arabic, English, French, German, Persian, Turkish, and Urdu, has been phenomenal. However, he remains an intensely private person and persistently discourages any biographical works about himself. His life and literary works do not seem to be as recognized as one might expect; that, in part, justifies this assessment.

This thesis considers the writings of Hamidullah by focusing on selected works that pertain to Islamic law and history in general, and to constitutional law in particular. Overall, this thesis is not concerned with comparing Hamidullah's writings or opinions with those of other authors in the field. Rather, it focuses on his thought and methodology, as they emerged from his social and political background, and as he expressed them in his literary achievements. This thesis, therefore, sets out to develop a critical analysis of Hamidullah's works, his philosophical perspectives, and his contributions to contemporary scholarship.

Muhammad Hamidullah, the youngest child in a family with three brothers and five sisters, was born in 1908 in Hyderabad, Deccan. His father, Muhammad Khalilullah, was Director of the Department of Revenue in the Nizam's State of Hyderabad, which

indicates the family's educational and political status. Hamidullah completed his primary education through home schooling with his sisters and their father, and he received his secondary education at Dar ul Uloom, Hyderabad, between 1913 and 1922. He pursued his undergraduate studies thereafter at the Nizam College, Hyderabad, from 1922 to 1928. He continued his graduate studies at the Osmania University between 1928 and 1932, where he received his Master's Degree and Law Degree in International Law. In 1933 Hamidullah decided to continue his graduate studies in Europe. He completed his Doctorate in International Law at Bonn University in Germany in 1935. In 1936, he entered Sorbonne University in France, where he obtained a Doctorate of Literature in the same year. During this productive time, the first 28 years of his life, Hamidullah received a wide as well as international education in the field of law. When he returned to Hyderabad, he immediately joined the Faculty of International Law at Osmania University, where he lectured from 1936 to 1946. In addition to his academic studies, he became involved in the politics of his country before and during India's invasion of Hyderabad in 1948. From 1948 to 1996, Hamidullah remained a stateless person, residing in France for most of the time. He utterly refused to surrender his Hyderbadi citizenship in the hope of returning to his beloved homeland if liberated. This perpetual dream was never realized. In 1996 he was obliged to travel for medical treatment to the United States of America. At age 93, in the year 2001, he remains in the United States of America, still receiving medical treatment.

Hamidullah's literary output has been enormous. He has written over 100 books and 900 scholarly papers.<sup>1</sup> He writes in over ten languages and is known to speak as

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<sup>1</sup> See Appendix.

many as 22 languages. His literary works address a wide range of subjects and concerns, such as political history, Islamic sciences, orientalism, tolerance and relations with non-Muslims, the status of women in Islam, social and political relations among a variety of nations, and the historical compilation of the Qur'ān, *ḥadīth* and *fiqh*. Despite his many accomplishments, Hamidullah does not seem to be appropriately recognized as a scholar outside his own literary and educational environment, particularly in the field of Islamic law. A possible reason for this lack of acknowledgement may be the fact that many of his works have not been translated from languages such as French, Arabic, German and Urdu into English, an international language and the dominant language in the West. Several of his books are published only in their original languages, thus limiting their accessibility. For instance, some of his works written in German have not been translated into Urdu or Arabic and the reverse is also true. In view of Hamidullah's lack of international recognition, it is appropriate to ask: What exactly defines a scholar? What level of achievement must one attain in order to be considered a scholar? It is important to understand what scholarship entails in order to assess Hamidullah and his works.

This discussion begins with a quote from Zafar Ishaq Ansari, Director General of the Islamic Research Institute, Pakistan, from the foreword of *The Emergence of Islam*, in which he describes Hamidullah as one of the most renowned Muslim scholars of the formative period of Islam's intellectual and institutional history:

*The Emergence of Islam* is an attempt to present, in clear and simple English, the contents of a series of twelve lectures delivered by Dr. Muhammad Hamidullah in March 1980 at Islamic University, Bahawalpur. The lectures, which were delivered without even the help of notes, are the result of a life-long study of, and reflections on, the early period of Islam by one of the best-known Muslim scholars of

our time. In these lectures the learned author attempts to highlight the basic thrust of Islamic teachings and to outline the formative period of Islam's intellectual and institutional history. Drawing upon his vast reservoir of knowledge, Dr. Muhammad Hamidullah attempts to explain, in a manner that would make even a lay audience appreciate, the genesis and growth of Islamic thought, society and state, and of the institutions which were developed to translate Islamic norms into terms of practice.

Delivered in an easy-to-understand Urdu, and a style that is inimitably simple, informal and lucid, the lectures are strikingly free of academic jargon and pedantry. The author successfully attempts to convey a synthetic picture of Islam as it unfolded itself in the early period of its history – as a religion, as a community, as a state, as an intellectual tradition, and as a set of institutions which evolved under Islamic inspiration.... The interest they generated and the appreciation they evoked are an index of the esteem in which Dr. Hamidullah's scholarship is held, especially in the South Asian Sub-continent.<sup>2</sup>

Ansari illustrates the characteristics of an exemplary Muslim scholar with Hamidullah as his referent. Within the parameters of Muslim scholarship, the individual should demonstrate a deep foundation of knowledge of the fundamental fields of Islam: its history, culture and theological concepts. Other traits that key Islamic teachings expect of a scholar include a demonstration of humility and grace and the ability to teach or convey the message to students and peers. In addition to these characteristics, one of the most prestigious positions one can reach in Islam is the position of a *muffi* with the privilege of granting a *fatwā*. In this case, one should have such characteristics as being able to solve a legal query through knowledge of the Qur'ān and *ḥadīth* and personal reasoning, *idjtihād*, as well as uphold a character of dependability and righteousness.<sup>3</sup> It is interesting to note that Hamidullah possesses many of the characteristics described

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<sup>2</sup> Muhammad Hamidullah, *The Emergence of Islam* (Delhi, Adam Publishers and Distributors, 1993), Foreword.

<sup>3</sup> E. Tyan, "Fatwā," *Encyclopaedia of Islam* 2 (1993): 866-867.

above such as extensive knowledge of the Qur'ān, the *ḥadīth* and *fiqh*.<sup>4</sup> But the intent of this study is to assess Hamidullah's scholarship beyond the guidelines of what defines a Muslim scholar. The original question remains: How do we define scholarship and are the parameters equally applicable for scholars of every culture and nationality, whether they are from the East or the West? Dr. Mahmood A. Ghazi, Minister of Religious Affairs of Pakistan, states the following regarding Muslim and Western scholarship, with reference to Hamidullah:

In spite of a large number of books published in English on various aspects of Islam there appears to be a great dearth of good books on the subject. The reason is that most of the books written in English are by those who are used to address a Muslim audience.... Amir Ali's *Spirit of Islam* was, perhaps, the first attempt by a Muslim scholar to present Islam to a western audience. The language he uses, the treatment he gives to his subject and the arguments he marshals are in keeping with the requirements of a western educated reader. He was followed by some other writers whose number is, however, very limited.

Dr. Muhammad Hamidullah, is perhaps, the first Muslim scholar who combines in himself the two aspects of being an eminent scholar of Islam and a devoted missionary who has a long experience of almost half a century to his credit in the field of communicating the message of Islam to a western audience. His book, *Introduction to Islam* is one of the most popular books which presents Islam in its totality to a modern educated man. Translated into more than one dozen languages, the book has appeared into many editions in various countries. It is the style of the author which has made the book so popular. The author deals with various aspects of Islam in a simple but vivid, easy but logical and brief but comprehensive manner.<sup>5</sup>

Accordingly, expectations for Western scholarship parallel most of the qualities of Muslim scholarship including: knowledge of a variety of languages, utilizing these languages efficiently, maintaining objectivity instead of subjectivity, and substantiating

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<sup>4</sup> See Hamidullah's *fiqh* related literary works in Appendix.

<sup>5</sup> Muhammad Hamidullah, *Introduction to Islam* 3<sup>rd</sup> ed. (Islamabad, Sh. Muhammad Ashraf, 1968), Foreword.



facts with adequate data. Based on the preceding analysis one can conclude that there is minimal difference between Western scholarship and Muslim scholarship and that a Muslim scholar may be from the West and vice-versa. The other question, however, remains: If Hamidullah is a Muslim scholar and also a scholar who writes for both the West and the East, why is he not internationally recognized in the field of Islamic law?

In light of the preceding discussion differentiating between Western and Muslim scholarship, a Muslim scholar writing for a Western audience on Islam and Muslims is quite an interesting phenomenon to examine. Must a Muslim scholar orient his philosophy and belief systems to correspond with the Western method of writing? On the other side of the coin, should the Western scholar shape his thoughts to correspond with the Islamic methodology of writing? Roy Mottahedeh, winner of a MacArthur Award in 1981, illustrates the paradigm of this phenomenon, proclaiming that one cannot understand the Arabs without understanding their language and that Islamic societies cannot be studied in Western terms.<sup>6</sup> He became proficient in Arabic and used Arabic words in order to produce his final product. Does research of this nature then indicate that the Western scholar writing about Islam should incorporate many of the expectations stipulated earlier for a Muslim scholar, such as developing great knowledge of the Qur'ān and *ḥadīth*? Furthermore, if a Muslim scholar lacks in one area of what defines a scholar according to Western expectations, should he or she be removed or ignored from the field of Islamic Sciences in the West? And vice versa; if a scholar upholding Western methodology lacks one trait of what defines a Muslim scholar,

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<sup>6</sup> See Roy Mottahedeh, *Loyalty and Leadership in an Early Islamic Society* (Princeton: Princeton University Press, 1980).

should he or she be ignored in the field of Islamic Sciences for Muslims and Islam? The debate between Western and Muslim scholarship continues and remains a significant topic of research. With the preceding in mind, this project sheds light on Hamidullah's scholarship as a Muslim who writes for both Western and Eastern audiences.

### The Purpose of This Study

This thesis examines five key themes and major claims from five of Hamidullah's books published in the English language. This work is also intended to improve our understanding of the intellectual and political trends in Hyderabad during the early to mid-1900s. These examinations will be of assistance to determine the source that may have inspired Hamidullah to write on the themes he preferred and the style in which he chose to write them. Above all, this analytical study of Hamidullah investigates the context of the ensuing quotation: "Professor Hamidullah is not only a scholar but an invaluable repository of an era of history that most have become oblivious to, the history of Islamic sciences, literature and scholarship. In many ways it would be appropriate for the people of this century to celebrate the discovery of the period of Hamidullah."<sup>7</sup>

It is crucial to emphasize that this thesis examines five works out of the more than 100 books that Hamidullah has written. It is also essential to bear in mind that we are studying his works written only in the English language. Thus this thesis is limited

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<sup>7</sup> Aslam Abdullah, "Dr. Muhammad Hamidullah: Scholar Par Excellence," *Islamic Horizons* Sept.-Oct. 1998: 46.

to the study of a small portion of Hamidullah's immense literary achievements and constitutes a humble initiation of a very extensive study on Hamidullah. The conclusions drawn at the end of this project will be based on the five works analyzed with brief references to some of his other writings. The five works in the field of Islamic constitutional law selected for this study include: *The First Written Constitution of Islam*, 3<sup>rd</sup> ed. (1975); *Sahifah Hammam ibn Munabbih*, 10<sup>th</sup> ed. (1979); *The Prophet's Establishing a State and His Succession* (1988); *The Muslim Conduct of State*, 7<sup>th</sup> ed. (1989); and *The Emergence of Islam* (1993). This sample is intended to reveal Hamidullah's understanding and interpretation of Islamic constitutional law and simultaneously permit an appreciation of his literary scholarship, including his style and methodology.

#### Procedure of the Investigation

In view of the preceding discussion, the thesis focuses primarily on the themes and claims of Hamidullah's literary output in the English language that are related to Islamic constitutional law, one of his primary areas of focus. This study assesses the factors that contributed to his understanding of law, as well as the motives--social, economic, psychological or political--that impelled him to write on this topic.

To arrive at this point, it is desirable to sketch out the salient aspects of his early life and environment in order to understand how his thoughts developed. To facilitate this investigation, Chapter One considers the predominant political and historical trends in Hyderabad before and after the Indian invasion of Hyderabad in 1948. Hamidullah

resided in France for two years and in Germany for one year before this invasion, known as Operation Polo. After Operation Polo he lived in exile in France from 1948 to 1996. Therefore, it is relevant to examine the political trends in these regions as well. The events that transpired in Deccan, France, and Germany will be surveyed, and how these events, coupled with Hamidullah's upbringing and experiences, may have inspired or molded his thoughts. An examination of the publication dates of the books as well as some of his other notable books will be performed in order to reveal some insight as to what may have prompted him to write on his chosen topics. Last, the chapter investigates Hamidullah's outlook on the judicial system of Islam compared with other systems in Islam. Does he adopt a unique approach when dealing with Islamic law, and why or why not? The chapter also formulates a brief outline of Hamidullah's life based on biographical excerpts.

Thereafter, the study examines Hamidullah's major themes and claims in the field of Islamic law. This task will be undertaken in Chapters Two and Three. I have identified five of Hamidullah's major themes in the field of Islamic law drawn from his works in the English language:

- 1) The amalgamation between politics and religion within Islamic constitutional law.
- 2) The indispensable foundation of Islamic law and polity.
- 3) The unrecognized pioneers in the field of law.
- 4) The resilience of Islamic law.
- 5) The authenticity of the origins of Islamic law with a special focus on the *ḥadīth*.

The first three themes which discuss Islamic law, specifically dimensions of constitutional law, will be examined in Chapter Two. The other two themes relating to the pillars of constitutional law, focusing on Islamic jurisprudence, will be addressed in Chapter Three. All five themes will be analyzed simultaneously while studying the following five claims that Hamidullah formulates and supports:

- 1) The Constitution of Medina was the first written constitution in the world.
- 2) The Medinan city-state was the first Islamic State and Prophet Muhammad was its founder in 1 Hijra.
- 3) The Muslims formulated a branch of study as well as a concise science for International law.
- 4) The Muslims were the first to establish a science for law, Islamic jurisprudence.
- 5) The *isnād* for *hadīth* is a valuable and authentic historical codification process.

Chapter Three concludes with an examination of the literary status of Hamidullah's claims in Western legal scholarship. Based on Hamidullah's major themes and claims, as discussed in Chapter Two and Chapter Three, a number of conclusions will be deduced thereafter.

Chapter Four will bring to the surface Hamidullah's methodological approach and ideological perception concerning Islamic law, specifically constitutional law. In order to make a conclusive statement on Hamidullah's works, it is necessary to study Hamidullah's technique, writing style, and the sources he chose in order to substantiate his claims. I also attempt to detect whether the author accurately adopts his sources to prove his findings and whether he uses his sources consistently throughout his writing.

This examination will be accomplished by examining the sources he uses throughout his various works, in addition to scrutinizing his use of primary sources.

The thesis concludes by assessing Hamidullah in light of the preceding examinations, in terms of his thoroughness of investigation, the evidence he provides to support his claims, and the validity of his conclusions. This will enable us to undertake the task of formulating a critical analysis and a concrete statement of Hamidullah's scholarship.

CHAPTER ONE

MUHAMMAD HAMIDULLAH: HIS HISTORICAL  
AND POLITICAL ENVIRONMENT

The historical and political context of Muhammad Hamidullah's life in both Asia and Europe is of tremendous importance, since biographical information on him is minimal. This dilemma stems from the fact that Hamidullah allegedly discouraged people from writing biographical works on him. Reasons for his taking this unusual position vary. Perhaps he wished for a life of simplicity and humility, disregarding opportunities for fame and glory. Or possibly he preferred to remain relatively anonymous in order to emphasize his works and the dynamics of his claims rather than himself. Regardless of the specific reasons for Hamidullah's request for privacy, it is interesting to note that he has permitted a few brief biographical sketches to be written about him in English and Urdu. This study will only draw information from the biographical sketches in English.<sup>1</sup> However, the works published in both languages consist of isolated aspects of his life, and therefore do not delve into the depths of his personal ambitions and endeavours. Thus, we hesitate to conclude that the works and data from which we are drawing biographical information from are adequate. As a result, it is necessary to explore Hamidullah's environment in order to create a biographical profile of him that may reveal concrete dimensions of his life and his

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<sup>1</sup> Omer Bin Abdullah, "Muhammad Hamidullah: A Lifetime of Service to Islamic Scholarship," *Islamic Horizons* July-Aug. 1999: 23-25; Sadida Athaullah, "In The Shade of Enlightenment," *Islamic Horizons* July-Aug. 1999: 26-27; Aslam Abdallah, "Muhammad Hamidullah: Scholar Par Excellence," *Islamic Horizons* Sept.-Oct. 1995: 46-47.

incentive for writing. Much of the information behind this mysterious figure remains concealed within his writings. It seems as though Hamidullah wished to be remembered by the content of his works, rather than as an individual who has distinguished himself in various spheres, receiving glory and praise. The subsequent chapters will analyze his literary works in order to discover further clues about the man, as the writer, and possibly the reformer.

### Hyderabad: Home of Hamidullah

Social development, economic prosperity, and political stability may be stimuli that affect the intellectual growth of a society and thus its individuals. Consequently, it is vital to understand the society in which Hamidullah grew up and how certain social factors could have cultivated his philosophy of life, his character, and his *weltanschauung*. Hamidullah was born in 1908 in Hyderabad, Deccan and resided there till 1948, except for three years of post-graduate studies in Germany and France. His ancestral roots belong to the Nawayat community, an offshoot of the Konkani Muslims of India. The Konkani Muslims were the first Muslims to arrive in India in 699 AC.<sup>2</sup> Prior and during the time of Hamidullah's youth, Hyderabad had been in existence for over three centuries and was by then a prosperous and progressive city.<sup>3</sup>

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<sup>2</sup> Omar Khalidi, "Konkani Muslims: An Introduction," *Islamic Culture* 1st ser. 74 (2000): 127-153.

<sup>3</sup> Omar Khalidi, *Hyderabad: After the Fall* (Wichita: Hyderabad Historical Society), xi; In 1591 Sultan Quli Qutb Shāh founded the city of Hyderabad in the region of Golkondā. The Sultan was the leader of one of the five independent states namely, Qutb Shāhi, which resulted from the break-up of the Bahmanī kingdom, 1347 – 1526, after the erosion of the Moghul era. In 1687, Awrangzīb 'Ālamgīr the last Moghul emperor of India, causing the Golkondā dynasty to end, annexed Hyderabad, in the region of Golkondā. In 1724, Hyderabad became the capital city of the Asif Jahi dynasty by the Mughal Viceroy



During Hamidullah's lifetime, Hyderabad reached a high level of stability characterized by socio-economic and cultural progress. Nizām Mir 'Uthmān 'Ali Khān Bahādur Fath Djang ruled with a sophisticated constitutional and administrative government. Established in 1922, the executive and judicial branches worked independently of each other.<sup>4</sup> While much of India was under British rule, Hyderabad remained independent, somewhat isolated from mainstream Indian politics.<sup>5</sup> Throughout this period of more or less political calm, Hyderabad city and the state, also called Hyderabad, focused on other matters such as its economic development. For instance, Hyderabad State issued its own currency notes and coins and acquired ownership of a major railway network, demonstrating its independence. In addition to its railway system, Hyderabad was the only princely state that had its own postal authority and airlines.<sup>6</sup> An intricate feudal system was dutifully adhered to and ten percent of the monies went to the Nizām's treasury.<sup>7</sup> The Nizām, considered one of the wealthiest men in the world,<sup>8</sup> assisted in the development of many monumental projects, such as the 'Uthmāniyya (Osmania) General Hospital, the Asafia Central Library, and several important water supply reservoirs, built in the 1930s.<sup>9</sup> From the 1940s onwards,

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of Deccan, Asif Jah, who declared the Hyderabad State independent of Delhi. Seven successive *Nizāms* then ruled Hyderabad, Asif Jah as the first *Nizām* and Mir 'Uthmān 'Ali Khān Bahādur, 1911-1948, the last *Nizām*. (Smith, 291-841).

<sup>4</sup> Narendra Luther, *Hyderabad: Memoirs of a City* (Hyderabad: Orient Longman Limited, 1995), 411.

Omar Khalidi, *Hyderabad State Under the Nizāms, 1724-1948: A Bibliography of Monographic and Periodical Literature* (Wichita: Hyderabad Historical Society, 1985), xxvii.

<sup>5</sup> Akbar S. Ahmad, "Muslim Society in South India: The Case of Hyderabad," in *Hyderabad: After The Fall* (Wichita: Hyderabad Historical Society, 1988), 180.

<sup>6</sup> M. M. Ali, "Hyderabad – The Glory That Was," in *Islamic Horizons* Nov.-Dec. 1998: 35.

<sup>7</sup> See A. M. Khusro, *Economic and Social Effects of Jagirdari Abolition and Land Reforms in Hyderabad* (Hyderabad: Osmania University, 1958); Ahmad, "Muslim Society in South India: The Case of Hyderabad," 179.

<sup>8</sup> Ahmad, "Muslim Society in South India: The Case of Hyderabad," 179.

<sup>9</sup> M. M. Ali, "Hyderabad – The Glory That Was," 34.

there was an economic boost based on the preceding decade with the establishment of the Industrial Trust Fund.<sup>10</sup> Although Muslims comprised 13 percent of the Hindu majority State,<sup>11</sup> they occupied the majority of administrative and official positions; however, ‘Uthmān ‘Ali Khān’s appointees did include Hindus who held positions such as police commissioners, ministers, and counsellors.<sup>12</sup> In addition, the Muslims and Hindus occupied similar jobs, such as merchants and shopkeepers.<sup>13</sup> Government economic expenditures extended to Hindu and Jain temples, Sikh *gurdwaras*, and churches, since a variety of faiths, such as Animistic (tribal), Christian, Parsi, Islam, and Judaism comprised the nation.<sup>14</sup> Also, a plethora of languages was spoken, including Telugu, Marathi, Canarese, English and Urdu. A Mufti implemented the Islamic Law for Muslims. His responsibility entailed ensuring that the laws of the State were applied equitably to people of all faiths.<sup>15</sup> The political and socio-economic systems of Hyderabad were stable, enlightened, and unique to its own milieu.

Hyderabad’s powerful economy and profound political stability gave rise to great intellectual growth during this period. The Nizām established the ‘Uthmāniyya (Osmania) University in 1918, the first university to offer instruction in Urdu, the

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<sup>10</sup> Afzal Mohammad, “Socio-Economic Structure of Hyderabad,” *Hyderabad-400 Saga of a city*, ed. K. S. Seshan (Hyderabad: Association of British Council Scholars, 1993), 90.

<sup>11</sup> Based on a 1991 census in Harriet Ronken Lynton and Mohini Rajan, *The Days of the Beloved* (Los Angeles: University of California Press: 1974), 268; Ahmad, “Muslim Society in South India: The Case of Hyderabad,” 178.

<sup>12</sup> Ahmad, “Muslim Society in South India: The Case of Hyderabad,” 178.

<sup>13</sup> Wilfred Cantwell Smith, “Hyderabad: Muslim Tragedy,” *Hyderabad: After The Fall* (Wichita: Hyderabad Historical Society, 1988), 3; Khalidi, *Haydarabad State Under the Nizāms, 1724-1948*, xxvii.

<sup>14</sup> Harriet Ronken Lynton and Mohini Rajan, *The Days of the Beloved*, 268.

<sup>15</sup> Zaher Parvz, “Hyderabad’s Last Nizam: A Passion For Service,” *Islamic Horizons* Nov.-Dec. 1998: 28.

State's native language.<sup>16</sup> As the university's library selections grew rapidly, various faculties such as engineering and medicine became acknowledged within ten years of its establishment.<sup>17</sup> This powerful institution, with a firm grasp of Hyderabad's heritage, provided the foundation of Hamidullah's education. Another strengthening force for the growth of education in Hyderabad was the establishment of Dairat al-Maarif al-Osmani foundation (DMO). Literary works, especially in classical Arabic from the sixth to the fourteenth century, many that were unpublished manuscripts scattered in libraries over several continents, became easily accessible. The Dairat al-Maarif al-Osmani foundation was located on the campus where Hamidullah studied. The state extended its educational pursuits beyond the 'Uthmāniyya (Osmania) campus and DMO.

'Uthmān 'Ali Khān donated great sums of money to the Aligarh Muslim University, the first modern Muslim institution of higher learning in India, as well as to the Islamiya College in Peshawar and other Muslim institutions in southern Madras. He also provided scholarships for individuals to study overseas as well as in Hyderabad State.<sup>18</sup> As a result of the high level of educational resources that Hyderabad offered during 'Uthmān 'Ali Khān's reign, a repository of scholars, intellectuals, authors, philosophers, and thinkers flourished.<sup>19</sup>

It is apparent that Hamidullah was fortunate to grow up in an intellectually and culturally vibrant city. The State of Hyderabad recorded an educational and spiritual awakening that paralleled its social, economic and political development. The Nizām

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<sup>16</sup> Ahmad, "Muslim Society in South India: The Case of Hyderabad," 178; Khalidi, *Hyderabad State Under the Nizāms, 1724-1948*, xxvii, 140.

<sup>17</sup> Ahmad, "Muslim Society in South India: The Case of Hyderabad," 178.

<sup>18</sup> Parvez, "Hyderabad's Last Nizām: A Passion For Service," 28.

promoted education in all respects and made educational resources easily accessible because of Hyderabad's financial status. A variety of languages, both Eastern and Western were taught, literature was easily accessible, and courses in Islamic Studies were offered at all levels. Such a society could provide any conscientious and determined person with significant advantages in his or her journey to become a scholar in any one of many fields. From the story of Hyderabad, we may be able to better understand Hamidullah's background and probable explanations for his intellectual and political pursuits.

#### Education Years in the West

Hamidullah earned two doctoral degrees: a Doctorate in International Law in Germany between 1933 and 1935, and a Doctorate in Literature in 1936 in France. Significantly, this was the first time he left his country in addition to his first visit to any Western country. Since there are no biographical insights concerning the perception of his visit or his experiences, we will instead survey the main events that occurred in Germany and France during his stay and speculate the impact that the cultural and socio-political events may have had on him.

Hamidullah entered Germany during the birth of the Third Reich and the Nazi Revolution that took place between 1933 and 1939. At this juncture there was much

instability in the political structure such that Germany metamorphosed into a totalitarian police state.<sup>20</sup> Several financial and economic crises were drastically affecting the security of the state, particularly its financial and administrative institutions. At this point, the socio-cultural structure collapsed and ethico-moral standards erupted into a hybridization of the Nazi and Marxist philosophies.

After spending two years in Germany, Hamidullah arrived in France. At this time France had already established itself for a century as a colonial power, in lands such as Algeria, Cambodia, Lebanon, Morocco, sub-Saharan Africa, Tunisia, and Vietnam, exemplifying its power and colonialist ambitions. But during this time, specifically from 1929 to 1936, France's internal politics was most unstable.<sup>21</sup> In 1936, the year Hamidullah began and completed his Doctorate of Literature, the Popular Front began, lasting until 1938. Leon Blum, the premier of France and a socialist, replaced anticlericalism with antifascism. Several social reforms were instituted, but soon a financial crisis hit France and eventually the government collapsed. Also, in 1936 Adolf Hitler re-occupied the Rhineland located in western France, transforming the country into a state of war again.

From the preceding brief analysis highlighting some of the main events facing Germany and France during Hamidullah's residence in these lands, it is evident that he was exposed to periods of considerable socio-political instability. We cannot be certain as to the impact, if any, that these Western countries had on Hamidullah, whether positive or negative. However, it is possible that during this time feelings of insecurity

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<sup>20</sup> "Germany," *Encyclopedia of Britannica*, 1998 ed.

<sup>21</sup> "France," *Encyclopedia of Britannica*, 1998 ed.

and indecision may have enveloped Hamidullah. These feelings may have resulted from the socio-political instabilities he faced in Germany and France, since he departed to Hyderabad immediately after completing his studies. As an ardent student of law, Hamidullah's sojourn in Europe definitely facilitated firsthand experience and an opportunity for the comparative analysis of Islamic law with Western law.

### The 1948 Operation Polo Milieu

Hamidullah returned to Hyderabad from France in 1936 and immediately embarked on a career in teaching as a professor at Osmania University in the Faculty of Law. At this time the British were preparing to leave India, departing with a *laissez-faire* position towards the political outcome of Hyderabad. Subsequently, the political nature of Hyderabad transformed from stability into chaos. Four political bodies erupted to deal with the upcoming changes of India: the Hyderabad State Congress, the Arya and Mahasabha movements, the Communist Party or the Andhra Mahasabha and the Madjlis-i-Ittihād-ul-Muslimūn; the first three parties were primarily Hindu and the last party, Muslim.<sup>22</sup> In 1946, when Britain's political designs were becoming crystallized, Hamidullah discontinued teaching at Osmania University after ten years, most probably taken aback from the intense political fervour. At this point, the Nizām commissioned Hamidullah to be a member of an appointed delegation to represent the State of Hyderabad at the United Nations to assess its political future.<sup>23</sup> The results of

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<sup>22</sup> Smith, "Hyderabad: Muslim Tragedy," 5-9.

<sup>23</sup> Abdullah, "Professor Hamidullah: An Islamic Scholar of Great Eminence," 34.

this meeting have not been revealed. In 1947, the British officially departed from India with the signing of The Independence Act in conjunction with the Indian National Congress and the Muslim League. Pertaining to the issue of Hyderabad, the document stated that the princely states that had treaties with the British would have the option to join either India, Pakistan, or to remain independent; Hyderabad-Deccan, a landlocked territory in the Indian Subcontinent, was the largest of such treaty states.<sup>24</sup> In the same year, 1947, Hyderabad entered into a “Stand Still Agreement” with India, a one-year agreement under which the political future of the State would be determined by the Nizām. Under the agreement, all administrative matters that existed between Great Britain and Hyderabad before the Independence Act in 1947, such as defence, were supposed to remain intact.<sup>25</sup> However, soon enough, the Indian Army sealed off Hyderabad, blocking travel at all entries and exits to and from the State.<sup>26</sup> At this point, in 1948, sincerely and deeply concerned for Hyderabad’s future, Hamidullah left his home with only a carry-on bag and 12 Hyderabadī Kaldars in his pocket.<sup>27</sup> Hamidullah was part of a delegation that left Hyderabad to Karachi in the plane flown by the famous Australian pilot Sidney Cotton.<sup>28</sup> The non-stop flight to Karachi was in defiance of the India-imposed economic blockade. From Karachi, the delegation took a commercial flight to Paris. Their objective was to lobby political support for Hyderabad. Neither specific details of the Hyderabadī delegation nor political strategies have been disclosed. Regardless of their efforts, in 1948 India attacked and occupied Hyderabad, a state that

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<sup>24</sup> Ibid., 9.

<sup>25</sup> Ibid., 11.

<sup>26</sup> Ibid., 13.

<sup>27</sup> Omer Bin Abdullah, “Muhammad Hamidullah: A Lifetime of Service to Islamic Scholarship,” 25.

<sup>28</sup> See Omar Khalidi, *Memoirs of Sidney Cotton* (Watertown: Hyderabad Historical Society, 1994).

held an army only for ceremonial purposes.<sup>29</sup> At this point, Hamidullah and his other delegation members became stateless refugees with the option of accepting either Indian or Pakistani citizenship. Hamidullah denied both options and opted for life in exile in Paris.<sup>30</sup> While he remained in exile, the Muslims in the Hyderabad region eventually no longer enjoyed any of their previous rights and privileges. Along with being terrified from the severe and ongoing anti-Muslim violence surrounding them, they suffered greatly in every domain possible, politically, culturally, socially, and economically.<sup>31</sup> Akbar S. Ahmad further expounds on this in “Muslim Society in South India: The Case of Hyderabad:”

Overnight, therefore, Hyderabad civilization – dress, food, language – became obsolete, redundant, a thing of the past. In 1948 Urdu ceased to be the medium of instruction at the Osmania University and the jargirdari system was abolished; in 1956 the name of the state, Hyderabad, disappeared from the map and its territories merged with three neighboring states. The state, from over 80,000 square miles, was literally cut down to size and reduced to the district of Hyderabad, just over 5,000 square miles. Its name and its identity were gone, the story of the state of Hyderabad was over.<sup>32</sup>

After analyzing the state of well-being that Hyderabad had established for its people, it is difficult to precisely assess the displeasure and the immeasurable pain Hamidullah must have experienced during the political annihilation of Hyderabad. One can only assume the deep wound that the initial steps of Operation Polo must have caused that would have compelled him to make such a drastic decision as to leave Hyderabad for

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<sup>29</sup> M. M. Ali, “Hyderabad – The Glory That Was,” 35.

<sup>30</sup> Omer Bin Abdullah, “Muhammad Hamidullah: A Lifetime of Service to Islamic Scholarship,” 24 - 25.

<sup>31</sup> Omar Khalidi, “The 1948 Military Operations and Its Aftermath: A Bibliographic Essay,” *Hyderabad: After The Fall* (Wichita: Hyderabad Historical Society, 1988), 215.

<sup>32</sup> Ahmad, “Muslim Society in South India: The Case of Hyderabad,” 181.



exile. Furthermore, he refused to relinquish his dream to return to Hyderabad by refusing to give up his Hyderabad citizenship, making France his escape and sojourn in transit. Hamidullah, and other representatives on behalf of Hyderabad, continued to present the case to the U.N. Security Council, where the case is still pending final status today.

### Exile in France

When Hamidullah arrived in France for the second time, World War II had just terminated, and once again Hamidullah was faced with great political unrest within his country of residence.<sup>33</sup> By the 1960s, under the leadership of Charles DeGaulle, France was competing for the position of the leading nation in Europe. By 1980, under the government of Francois Mitterand, there were determined socialist endeavours to change France's political agenda.<sup>34</sup> We question whether these frequent, intermittent, and fluctuating political, social, and economic changes in France had any impact on Hamidullah's perspective of the status and the nature of European politics. Clearly, his intellectual thought and political endeavours continued to develop upon entering France. The crisis of Operation Polo was a perpetual concern for him as he immediately founded and established the Hyderabad Liberation Society in order to negotiate the recognition of Hyderabad as an independent state. This political endeavour persisted for 19 years until the Nizām passed away in 1967. Hamidullah's struggle subsided at this point but

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<sup>33</sup> Donald Kagan et al., *The Western Heritage Since 1300*, 4<sup>th</sup> ed. (Toronto: Collier Macmillan Canada, 1987), 1126.

<sup>34</sup> *Ibid.*, 1127-1128.

it was not abandoned completely, since the status of Hyderabad remains open with the United Nations. He decided to reside in France, without family, without a homeland, and without citizenship from the country where he lived for half a century. The death of the Nizām, the invasion of Hyderabad by India, the killing of approximately 200 000 Muslims by the Indian army,<sup>35</sup> and the dissolution of innumerable well-established institutions--administrative, educational and social--could only serve to intensify Hamidullah's disappointment and disapproval of the political systems that prevailed in Europe and India.

It seems as though the numerous negative experiences he faced motivated his efforts to vigorously endeavour his pursuits. In France, he was called upon to offer his political expertise and scholarship on many occasions.<sup>36</sup> From 1954 to 1978 he continued his work at the Centre Nationale de la Recherche Scientifique in Paris. Soon after, he was a visiting professor at the University of Istanbul, Turkey. He was also a member of the Oriental Studies Research Centre of France for over twenty-five years and the treasurer and active member of the Jami'at al-Sadaqatah al-Islamiyah.<sup>37</sup> In both 1980 and 1992, the President of Pakistan, Zia ul Haq, invited him to settle in Pakistan but he refused the offer, stating that he was waiting for the return of his Hyderabad citizenship and that he would continue to struggle for Hyderabad's independence while residing in France. Hamidullah remained isolated from European social life and

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<sup>35</sup> Pandit Sundarlal and Qazi Muhammad Abdulghaffar, "A Report on the Post-Operation Polo Massacres, Rape, and Destruction or Seizure of Property in Hyderabad State," *Hyderabad After the Fall*, (Wichita: Hyderabad Historical Society, 1988), 99.

<sup>36</sup> See Abdullah, "Dr. Muhammad Hamidullah: A Lifetime of Service to Islamic Scholarship," 23-26.

<sup>37</sup> Hakim Mohammad Said, *Essays on Islam: Felicitations Volume in Honour of Dr. Muhammad Hamidullah* (Karachi: Hamdard Foundation Pakistan, 1992), viii-ix.

continuously struggled for his dream. This can be further demonstrated by the fact that Hamidullah resided alone in humble dwellings, refusing to marry a non-Muslim French woman. He held firmly to his foremost intentions of returning to his homeland and marrying a Muslim woman from Hyderabad. It was also difficult for him to marry since he was considered a refugee in France, having to fight for the renewal of his refugee status every two years until 1996. He proclaims that he did not wish to put this burden on anyone else's shoulders. In 1996, Hamidullah was hospitalized for hypothermia and was taken to the United States for medical treatment, terminating his hopes of returning to Hyderabad, Deccan after 48 long years in exile.

Hamidullah's intense struggle for his homeland contrasts with the numerous, pragmatic publications he produced, signifying his firm focus and undeterred commitment to writing. For instance, the five literary works under study, except the first edition of his Ph.D. dissertation completed in 1941, were prepared while in exile between 1948 and 1996. Hamidullah's second edition of his Ph.D. dissertation was published from Hyderabad in 1948 during war conditions, but the third through seventh editions were published thereafter in France.<sup>38</sup> This demonstrates that neither his writing proficiency and effectiveness, nor his research, were reduced by the political catastrophes of Hyderabad. Similarly, his long residence in France, without family and many of the basic necessities of life, had no observable negative impact on his writing. Understanding the time period and place wherein Hamidullah wrote the books under examination may generate an understanding of what motivated him to write, what

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<sup>38</sup> See Prefaces to the First to Seventh Editions of *The Muslim Conduct of State*.

methodology he adopted to do so, and why he chose to focus on Islamic Constitutional law.<sup>39</sup>

### Glimpses of Hamidullah's Religiosity

Only assumptions and implications may be drawn in the process of assessing an individual's spirituality and piety, and in the case of Hamidullah, this process is even more arduous. As a young man he memorized the Qur'ān and studied classical Arabic; both achievements reflecting his appreciation and comprehension of the Qur'ān, worship and supplications. His constancy of faith evolved into proactive religiosity and this growth was balanced by his piety.

Hamidullah is known to have lived in extremely humble conditions, although he could have very easily chosen to live otherwise. An anecdote of his humility can be observed by his refusal to stay in the Prime Minister of Pakistan's guesthouse in 1948. At that time, he and renowned Islamic thinkers such as Syed Suleman Nadvi were invited to work on a 22-point set of guidelines for an Islamic constitution for Pakistan. Hamidullah adamantly refused to stay in the guesthouse and he also refused any type of reward, stating that he had come only to serve Pakistan.<sup>40</sup> In Paris, we are told briefly about his lifestyle and living compartments by his niece, Sadida Athaullah, the only woman from his family to see him since Operation Polo in 1948. When she visited her uncle in 1981 he was already 75 years of age. She relates the following:

The affairs of the world were woven around the *salat* times. The

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<sup>39</sup> See Bibliography for dates of publication.

<sup>40</sup> Abdullah, "Muhammad Hamidullah: A Lifetime of Service to Islamic Scholarship," 23.

day began with *Fajr* prayer and Qur'ān reading, then a breakfast of bread, honey, milk and dates. The morning mail would arrive and he would set to reply letters needing urgent attention. Once this was done, he would descend the 114 steps from his apartment and walk to the post office, feed the pigeons on the way and do any other errands. He would then come home and sleep until *Zuhr*.

When I was with him, we would go out to eat, otherwise he had a light snack. Then he usually went to the library until *Asr*. He would schedule any appointment in the late afternoon and usually received his visitors at this time, after *Asr*.

It was fascinating to watch his visitors, who would feel extreme discomfort because Dada hated to waste time in any small talk. The visitor had to come prepared to present his request. Within seconds of entering his room Dada would demand, 'What can I do for you?' or 'What do you need?' If the person was not there for a specific reason, Dada would stand up and remain standing until his guest had no choice but to leave. The door of his apartment was never locked, unless he was out of town.

The afternoon mail would arrive and every letter that started with the greeting '*As Salaam Alaikum*,' even if no reply was necessary, would receive a reply. This was in accordance with the Islamic manners that required that the salutations must be responded to. After his visitors were gone, he would go downstairs again and mail the rest of the letters. He descended the 114 steps at least three times daily.

He worked on his literary pursuits in the early evenings and nights, working on different articles and projects at the same time. This helped him to stay focused and not get bored. He wrote for anyone who wished to publish, always encouraging new publishers. He not only wrote under his own name, but also under pen names, which he prefers not to be disclosed at this time.<sup>41</sup>

This quote clearly illustrates a life of discipline and humility. He also lived on the fourth floor of a building in the old Latin Quarter that was considered "an abode more suited for a struggling student than a scholar of his stature."<sup>42</sup> In addition to his humble living style, he continued to follow the traditional Hyderabadi dress code: a goatskin hat, white pajama pants, and a simple sherwani tunic coat, despite living in France.

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<sup>41</sup> Athaullah, "In The Shade of Enlightenment," 26-27.

<sup>42</sup> Ibid., 24,

Another example of Hamidullah's humility may be observed in 1985, when he was graciously awarded the Hilal-e Imtiaz award, the highest civilian award of Pakistan, from the President of Pakistan, Zia ul Haq. The award included one million rupees. Hamidullah refused the award thereafter donating the money to the Islamic Research Institute of Islamabad. His humility is exemplified once again in 1990 when the Prime Minister of Pakistan, Nawaz Sharif, visited Hamidullah in Paris and offered him a superior residence and a caregiver in order to facilitate recovery from his illness. He refused the gesture and responded that a caregiver would be an intrusion to his lifestyle.<sup>43</sup> When he was in the United States for medical treatment, the editor of *Islamic Horizons*, upon visiting Hamidullah in 1999, elucidated the following remarks:

The meeting of Dr. Muhammad Hamidullah in a modest townhouse in Wilkes-Barre, PA on a cold March day, was a reminder that this giant of Islamic scholarship was, even at 91, living the simple life that he has always espoused. The most obvious furniture in the room was bookshelves filled mostly with his works.<sup>44</sup>

Hamidullah's simplicity is also suggested by his refusal to disclose biographical information about the intricacies of his life. This in itself serves as proof of his humbleness and piety. Hamidullah's spirituality is balanced superbly by his pragmatism and humility.

### Why Islamic Constitutional Law?

The title of this thesis is *Muhammad Hamidullah and Islamic Constitutional Law* since a main focus of Hamidullah's studies and literature is in the field of Islamic

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<sup>43</sup> Abdullah, "Muhammad Hamidullah: A Lifetime of Service to Islamic Scholarship," 23.

<sup>44</sup> *Ibid.*, 23.

law, Shari‘ah -- specifically laws surrounding the Islamic State, Islamic constitutional law. Ghazi elucidates in the Foreword of Hamidullah’s *The Prophet’s Establishing a State and His Succession*: “One of the main areas of his specialization is constitutional law and international law in Islam and concept and conduct of Islamic / Muslim State.”<sup>45</sup> This reinforces that one of Hamidullah’s main areas of focus is indeed Islamic law, specifically state-related subjects or constitutional law. Hamidullah probably was influenced as a youth in the area of constitutional law because his father served as Hyderabad’s Director of the Department of Revenue. Clearly, he was exposed to the subjects of government and politics to a high degree through his father’s political state involvement. Additionally, his undergraduate degree emphasized Islamic law, which provided a foundation and an inspiration to further delve into the study of law and the state. Thus his educational foundation and involvement in national politics likely coalesced to form a mind-set to write on constitutional law. Lastly, Hamidullah’s experiences of the disarray of national law in Europe and the Indian subcontinent during his early life probably contributed to his reduced regard for Western political systems, as well as his motivation to research and present Islamic constitutional law to Muslims and the rest of the world.

Hamidullah’s book entitled *Introduction to Islam* may convey further insight regarding his emphasis on constitutional law. If we analyze Hamidullah’s chapter on “The Judicial System of Islam,” compared with the other systems he has written on such

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<sup>45</sup> Muhammad Hamidullah, *The Prophet’s Establishing a State and His Succession* (Islamabad: National Hijra Council, 1988), iii.

as Islam's economic, political, and moral systems, we can discern a difference in his attitude towards the subject.<sup>46</sup> Hamidullah commences his section on the "Judicial System of Islam" with a sub-topic entitled "Special Contribution of Muslims," in an attempt to substantiate the claim that Muslims made a valuable contribution in the field of law. He does not make this distinction for the other systems in Islam. For instance, his second sub-section, entitled "Science of Law," identifies the absence of a science of law prior to Islam.<sup>47</sup> A second example of this nature is on the subject of International Law in the preceding chapter, "The Political System of Islam." In the section entitled, "Foreign Relations," Hamidullah asserts the Muslims' valuable contribution in this field in terms of developing international law as a distinct discipline.<sup>48</sup> Hamidullah emphasizes the practicality of Islamic law today in terms of its facility in adapting to different peoples and cultures. He also identifies the many cultures in which Islamic law was successfully applied throughout history:

Muslim law began as the law of a State and of a ruling community and served the purposes of the community when the Muslim rule grew in dimension and extended from the Atlantic to the Pacific. It had an inherent capacity to develop and to adapt itself to the exigencies of time and climate. It has not lost its dynamism even today, in fact it is obtaining more and more recognition as an agency for good, by Muslim countries which were formerly under foreign political – and therefore juridical – domination, and are trying to reintroduce the Shari'ah in all walks of life.<sup>49</sup>

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<sup>46</sup> Muhammad Hamidullah, *Introduction to Islam*, 4<sup>th</sup> ed. (Lahore: Sh. Muhammad Ashraf, Publishers & Booksellers, 1974).

<sup>47</sup> Hamidullah, *Introduction to Islam*, 120.

<sup>48</sup> *Ibid.*, 114-115, 122,

<sup>49</sup> *Ibid.*, 135 –136.



Throughout the preceding account, probable hypotheses for understanding Hamidullah's focus on Islamic constitutional law have been presented. A foremost conclusion one can make concerning this focus is his profound comprehension of Islam, including its doctrines, history, and heritage. Islamic theology does not segregate church and state; therefore, the theme of Hamidullah's works comprises a synchronization of theology and law.

## CHAPTER TWO

### MUHAMMAD HAMIDULLAH AND DIMENSIONS OF ISLAMIC CONSTITUTIONAL LAW

The purpose of a state in Islam is to provide a unification mechanism for the community or the *ummah*,<sup>1</sup> to provide a governing forum for Islamic laws,<sup>2</sup> and to uphold and protect the Islamic law or the Shari'ah.<sup>3</sup> Therefore, an Islamic State comprises a socio-political character as mirrored in the Shari'ah:

Islam works as a complete code of life. The Muslim life consists of no dichotomy. In what a Muslim has to do in secular transactions, in his actions for social dealings, individual interest, national demands, international brotherhood, nay, in all relations of human civilizations, there is a complete direction contained in the institutions which he follows. For these reasons, Islam is a religion of human nature, a religion of conduct of life. The name given to this entire system is Shari'ah.<sup>4</sup>

Hamidullah's concept of the Shari'ah or Islamic law, specifically state-related dimensions of the law, Islamic constitutional law, is the area that this study intends to explore. Three major claims that Hamidullah forms pertaining to the field of constitutional law are: first, the Constitution of Madinah is indeed a constitution and it is the first written constitution in the world; second, the Madinan Islamic State was the first Islamic State and the Prophet was its founder in 1 Hijrah; and third, international law, formulated by the Prophet's state laws, has developed into a branch of study and a

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<sup>1</sup> Farooq Hassan, *The Concept of State and Law in Islam* (Washington, University Press of America, Inc., 1981), 106.

<sup>2</sup> *Ibid.*, 2.

<sup>3</sup> Kemal A. Faruki, *The Evolution of Islamic Constitutional Theory and Practice* (Karachi: National Publishing House Ltd., 1971), 1.

<sup>4</sup> Hassan, *The Concept of State and Law in Islam*, 99.

well-developed corpus. Each major claim, more or less, has been expressed in three separate books. For practical reasons, it is suitable to examine each book separately, thereby emphasizing the major claim put forward in each book. This format has been chosen in order to simplify the analysis and to better facilitate the reader's understanding. Otherwise, extensive cross-referencing and convoluted thematic analyses could eventually become awkward, affecting our intended purpose and direction. It should be borne in mind that emphasis is based on the most salient points of Hamidullah's major claims. Issues which have no direct relevance or which are unnecessary will be either completely omitted or understood from the general context. Subsequently, three themes within Hamidullah's legal works will be addressed in this chapter: first, the unique characteristic of the amalgamation of politics and religion within Islamic constitutional law; second, the indispensable foundation, Qur'ān and *sunnah*, of Islamic law and polity; and third, the unrecognized contributions that Muslim pioneers have made to the field of law. In order to examine each of these themes and the three claims mentioned earlier, one claim per theme will be analyzed. For instance, when analyzing the first theme, the amalgamation of politics and religion within Islamic constitutional law, the theme within the first claim will be analyzed -- that the Constitution of Madinah is indeed a constitution and the first written constitution in the world. This method of study will facilitate probing into Hamidullah's philosophy enveloping Islamic constitutional law. Additionally, the study intends to investigate the books in accordance with the chronological sequence of Islamic history rather than in terms of the publication dates of the books: for instance, with the formulation of the Constitution of Madinah, the Madinan Islamic State was established, and that, in turn,

allowed for the formulation of Islamic international law. By this method of analysis, the development of Islam as described by Hamidullah, coupled with the coherence of his concept of Islamic constitutional law, may be concisely followed.

### The Amalgamation of Religion and Politics

The Islamic paradigm does not separate religion and politics; instead, it amalgamates them into an integral and dynamic unit. Hamidullah reiterates this unique phenomenon through the following words: “The Islamic conception of life being a co-ordination between the body and the soul, it was natural that a very close relationship should have been established between religion and politics, between the mosque and citadel.”<sup>5</sup> The unification of religion and politics is a prominent theme in Hamidullah’s literary works on constitutional law. For instance, in *The First Written Constitution in the World*, he continuously demonstrates the political implications of the Constitution and simultaneously emphasizes that the author of the document, the Prophet, is a religious leader. The theme is repeated and reflected in *The Prophet’s Establishing a State and Succession* and in *The Muslim Conduct of State*. Since the content of Hamidullah’s works illustrating this theme is relatively extensive, selected examples will be drawn from one work, *The First Written Constitution in The World*, in order to illustrate the viewpoint. As stated in the introduction of this chapter, in order to evaluate Hamidullah’s philosophy and to assess his scholarship for the final chapter and

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<sup>5</sup> Muhammad Hamidullah, “The Political System of Islam,” *The Introduction to Islam*, 4<sup>th</sup> ed. (Lahore: Ashraf Printing Press, 1974), 105.

conclusion, detailed examples will be given. This analysis should simultaneously give the reader an appreciation of the theme and Hamidullah's claim that the Constitution of Madinah is the first written constitution in the world. Since the document also paves the way for the development of the Islamic State and Islamic international law, this study will provide the foundation for the following segments in this chapter.

The document, Constitution of Madinah, entitled as book (*kitāb*) or document (*sahīfah*) in Arabic, is considered entirely authentic and of notable historic importance by Hamidullah.<sup>6</sup> He does not elaborate on the Constitution of Madinah as he does for Islamic international law in *The Muslim Conduct of State*, his Ph. D. dissertation. His ultimate motivation for writing on the Constitution of Madinah is to dwell on the function of the document and what it achieved. The data for this investigation will be drawn from the segment he entitles 'Introduction' of his booklet entitled *The First Written Constitution in the World*. The bulk of his work is the translated constitution itself.

In the Prophet's design of the Constitution, issues that confronted him on his arrival in Madinah played a major role. These issues comprise, for instance, the settling of the *Muhādjirūn* or the Muslim refugees from Makka, defining the rights and duties of both *Muhādjirūn* and *Ansar*, interacting with the Jews of Madinah, and arranging a military defence.<sup>7</sup> Therefore, the document commences by addressing the various

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<sup>6</sup> Hamidullah, *The First Written Constitution of the World*, 3<sup>rd</sup> ed. (Lahore: Sh. Muhammad Ashraf, 1975), 38 – 40.

<sup>7</sup> In *The Battlefields of the Prophet Muhammad* Hamidullah states that the Prophet enacted a treaty entitled the Treaty of Aqabah with two Arab tribes of Madinah, *Aws* and *Khazraj*. Two meetings were convened leading up to the realization of the Treaty of Aqabah. The first meeting included merely six people, and the second meeting encompassed twelve people, representing families from both the *Aws* and *Khazraj* tribes. After a year, seventy-three people came from Madinah to Aqabah and enacted the Treaty of Aqabah. These people were all residents of Madinah who embraced Islam and pledged

parties involved in its enactment. Knowledge of the time period of the document's composition is necessary information for the examination. Hamidullah states that the document encompasses two main sections. The first section, consisting of 25 clauses, was enacted between the Arab tribes of *Aws* and *Khazraj*, including Arab-Jewish converts and pagans.<sup>8</sup> This agreement occurred at the onset of the Prophet's arrival in Madinah due to a number of social and political issues enumerated earlier. The second part of the document, consisting of 23 clauses, was enacted between the Muslims and the Jewish tribes. Hamidullah assertively claims that this alliance with the Jews could not have taken place prior to the Battle of Badr since it was too soon for the Jews to accept the Prophet's leadership. However, the reason that the Jews eventually recognized the Prophet's position was because of their instability and insecurity created by the Muslim's victory at Badr coupled with their own disunity: "Cut off from all sides, they had become friendless and a prey to any and every strong invader. Circumstances such as these obliged them to seek the protective co-operation of the Holy Prophet, while retaining their religious freedom as well as internal autonomy."<sup>9</sup>

Hamidullah brings to light a number of concepts of a political character that demonstrate the events surrounding the making of the Constitution. First, the political alliances established by the making of the Constitution and, second, the political

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allegiance to the Prophet. It was at the Treaty of Aqabah that the Arabs of Madinah invited the Prophet to dissolve the feudal inter-tribal fighting in Madinah, and they agreed to protect him in return. (9-13).

<sup>8</sup> In *The First Written Constitution in the World* Hamidullah states that there are 25 clauses but Wellhausen followed by other European writers utilize 23 clauses. Therefore Hamidullah uses 23 clauses while dividing two clauses by the signs a and b. This act was performed for ease of reference by anyone using European sources (19-20).

<sup>9</sup> In *The First Written Constitution in the World* Hamidullah supports his view by *Lisan al-'Arab* and *Abū Dawūd* wherein these sources describe the Constitution as two separate parts upholding two different titles (22).

advancements gained by the Prophet's role achieved by the Constitution. The amalgamation of these political endeavours with the ideology of Islam thus upholding a politico-religious character will be illustrated. The following examination will parallel the sequence in which the clauses are presented.

The strategy Muhammad utilized to terminate the chaos of tribalism was to unite the various anarchic tribes into one community or *ummah*.<sup>10</sup> In following Hamidullah's division of the Constitution, in section one, the first group that Muhammad consolidated was the "believers and Muslims of Quraysh and Yathrib, and those who followed them and joined and struggled with them."<sup>11</sup> The Prophet continues to state in the clause thereafter, "they are one community (*ummah*) to the exclusion of all men."<sup>12</sup> The formation of this new unit, consisting of the refugees from Makka, the 'Helpers of Madinah,' and the Jews coupled with the unit's religious and / or political connotations will be investigated.

The first party involved in the enactment comprised the refugees of Mecca. This newly formed 'tribe' included individuals from a variety of tribes, nationalities, socio-economic statuses and cultural backgrounds. The major unifying factor, according to Hamidullah, was their new ideology Islam.<sup>13</sup> He places the word 'tribe' in quotation marks to signify a distinct unit, a new heterogeneous group comprising "diverse tribes and even to non-Arabs, like the Abyssinian Bilāl, the Greek Suhaib, the Iraqi Khabbab ibn al-Aratt...."<sup>14</sup> This body or group did not comprise the identical elements as Arabian

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<sup>10</sup> Hamidullah, *The First Written Constitution of the World*, 18.

<sup>11</sup> *Ibid.*, 41; Clause 1.

<sup>12</sup> *Ibid.*, 41; Clause 2.

<sup>13</sup> *Ibid.*, 27 - 28.

<sup>14</sup> Hamidullah, *The Prophet's Establishing a State and His Succession* (Islamabad: National Hijra Council, 1988), 34.

tribes preceding the formation of the 'tribe.' We may conclude that this act demolishes most precepts and characteristics of what was previously defined as a tribe.

The second party in the first part of the enactment is the 'Helpers of Madinah'. Eight out of the ten groups, residing as clients of different Madinah Arab tribes, are listed from clauses four to eleven: Banū 'Awf, Banū 'l-Ḥarīth, Banū Sā'idah, Banū Jusham, Banū 'n-Najjār, Banū 'Amr ibn 'Awf, Banū'n Nabīṭ, and Banū 'l-Aws.<sup>15</sup> An indication of the Prophet's efforts to further unify the various groups in Madinah is apparent in the last phrase of the first clause of the Constitution that reads: "and those who followed them and joined and struggled with them."<sup>16</sup> Hence, one can conclude that the Prophet is describing the non-Muslim factions, since he already mentioned the Muslims of Madinah and Makka.

Ḥamidullah explains the citing of non-Muslims in clause one by expounding on clause sixteen that reads: "To the Jews who follow us belong help and equality. He shall not be wronged nor shall his enemies be aided."<sup>17</sup> The Jewish tribes mentioned in the first segment of the Constitution are not listed as tribes. Therefore, the Jews did not belong to a specific tribe but, instead, are Arabs who converted to Judaism, specifically children belonging to non-Jewish Arab pagan families. This resulted from non-Jewish Arab parents having Jewish children by vows pledged to their gods.<sup>18</sup> Therefore, the parents could belong to one of the Arab tribes mentioned, but their children would be

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<sup>15</sup> In *The First Written Constitution of the World* Ḥamidullah states that the reason they are listed as groups and not tribes is because they did not amalgamate in their original tribal unit for the making of the Constitution. This presumable disunity can be explained by the fact that "they were not the original inhabitants of the locality but had come there later, perhaps as refugees or as displaced individuals, and settled there as clients of different Arab tribes" (42-44); Clauses 4-11.

<sup>16</sup> *Ibid.*, 41; Clause 1.

<sup>17</sup> *Ibid.*, 46; Clause 16.

<sup>18</sup> *Ibid.*, 29 - 30.



Jewish. Returning to our primary discussion, if the Jews wanted to cooperate with the Muslim leadership or were prepared for “subordinate co-operation,” they would be given rights of citizenship equal to the Muslims.<sup>19</sup> These rights would also include receiving protection and assistance; thus, no manner of oppression would be permitted against them. These rights were extended to pagans who were relatives and part of the Madinan tribes that joined the Constitution, according to Hamidullah.<sup>20</sup> Unifying these Madinan tribes, encompassing Muslims, Jews, and pagans from their anarchic condition superseded and finally mitigated the chaos of tribalism. Many of the various existent Arab tribes, including a newly formulated heterogeneous ‘tribe,’ collaborated as a single unit or *ummah*.

Hence, the Prophet successfully united the unbridled Muslim tribes of Madinah with Jewish and pagan subjects into one *ummah*, eliminating their anarchic status. The Prophet’s efforts to unite the tribes into a new *ummah* not only terminated the chaos of the tribal affiliation, but also formed a new body comprising different races, religions and tribes. Hamidullah describes this new body that the Prophet formed as a political unit. The development of this unit was a unique historic landmark in Islam. It was the first unit formed in the Prophet’s era and maintained a political character, thus stressing the importance of politics. Political functions, such as the ability to make alliances and treaties with different tribes and followers of different religions, combined with a religious ideology, that promoted equality and fraternity, accentuated the momentum for the establishment and expansion of further political endeavours such as an Islamic

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<sup>19</sup> Ibid., 30.

<sup>20</sup> Ibid., 21.

State. This can be appreciated from the following quote by S. D. Gotein:

“Muhammad, even in Mecca, conceived of the religious community as a socio-political unit in the astonishing fact that soon after his arrival at Madinah, he was able to organize the whole population of the town, Muslims and non-Muslims, as a body politic called *ummah*.”<sup>21</sup> Therefore the initiation and development of a politico-religious unit was realized upon the Prophet’s emigration to Madinah. A note in parentheses concerns the issue that Hamidullah does not classify the unit specifically as a religious unit but this can be inferred from his approach to the entire subject and from his other pieces of literature.<sup>22</sup> Religious implications in his discussion on the Constitution include: God is the source of authority with the Prophet as His messenger and example for mankind,<sup>23</sup> the group within the Constitution is based on the ideology of Islam,<sup>24</sup> and the word *din* used in the Constitution is defined as both religion and government. This last point poses immense politico-religious interest to Hamidullah: “It is a fact of such great importance that if we lose sight of it we shall fail to understand the religion and politics of Islam in a proper way.”<sup>25</sup> Numerous writers discuss whether the new unit or *ummah* formed was a political unit or a religious unit, or whether it maintained both characteristics. For instance, Frederick M. Denny, R. B. Serjeant and Rubin Urbin state that the formation of this new unit was solely of a political nature.<sup>26</sup> However,

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<sup>21</sup> S. D. Gotein, *Studies in Islamic History and Institutions* (Leiden: E. J. Brill, 1966), 128.

<sup>22</sup> See Muhammad Hamidullah, *Muslim Conduct of State*, 7<sup>th</sup> ed. (Lahore: Sh. Muhammad Ashraf); Muhammad Hamidullah, *Introduction to Islam*, 4<sup>th</sup> ed. (Lahore: Sh. Muhammad Ashraf, 1974).

<sup>23</sup> Hamidullah, *The First Written Constitution in the World*, 18.

<sup>24</sup> *Ibid.*, 28.

<sup>25</sup> *Ibid.*, 37.

<sup>26</sup> Frederick M. Denny, “The Constitution of Madinah,” *Journal of Near Eastern Studies* (Chicago: University of Chicago Press, 1977), 39-47; Rubin Urbin, “The Constitution of Madinah,” *Islamic Quarterly*, 8 (1964): 14-15.

Montgomery Watt upholds the opinion that the *ummah* could be either a political or a religious unit<sup>27</sup> while Al-Tayib Zein al-Abdin, a student of Serjeant, states that it was both.<sup>28</sup> One may marvel at how one could refer to the unit solely as a political unit when its unifying force was indeed a religion, and a religion that called for the establishment of a brotherhood for all mankind as Hamidullah expresses. The primary element in the formation of this political unit was Islam, and the Islamic State, which not only allows but guarantees religious pluralism and autonomy to individual religions.

The first part of the Constitution encompasses an enactment with the Muslims, polytheists and the Jewish converts. The second part of the Constitution, according to Hamidullah, was enacted after the battle of Badr, solely to deal with the various Jewish tribes. Hence, he believes the Jews mentioned in the document had given their complete approval to be integrated in it. He even proceeds a step further to state three major successes that the Prophet accomplished in his pact with the Jews:

1. The Jews accepted the Prophet as the judicial authority, thus making the pact a “major political victory for the Muslims.”<sup>29</sup>
2. The Jews accepted the Prophet as the chief military commander, thus making the pact “a great political success for him.”<sup>30</sup>
3. The Jews accepted Madinah as a sacred territory thus making it “one of the political achievements of the Prophet to have a semi-Arab city like Madinah recognized.”<sup>31</sup>

These three claims concerning the political achievements by the Prophet invite much investigation.

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<sup>27</sup> Montgomery Watt, *Muhammad at Medina* (Oxford: Oxford University Press, 1961), 241.

<sup>28</sup> See Al-Tayib Zein al-Abdin, “The Political Significance of the Constitution of Madinah,” *Arabian and Islamic Studies* (1983).

<sup>29</sup> Hamidullah, *The First Written Constitution in the World*, 36.

<sup>30</sup> *Ibid.*, 35.

<sup>31</sup> *Ibid.*, 36.

In both the first and second part of the Constitution it states that the Prophet is the final court of appeal. This is identified in clause 23 that states, “Whenever you differ about a matter, it must be referred to God and to Muhammad.”<sup>32</sup> Clause 42 states, “If any dispute or controversy likely to cause trouble should arise, it must be referred to God and to Muhammad, the Apostle of God (may God bless him and grant peace), God accepts what is nearest to piety and goodness in this document.”<sup>33</sup> Hamidullah condones the fact that private individuals or families no longer sought legal rulings, but instead submitted to a central authority, the Prophet, thus bringing about a “revolutionary change and improvement in Arabia.”<sup>34</sup> In legal matters the Prophet did not force the Jews to adhere to the Islamic law. Clause 25 states that the Jews are entitled to their own religion and law.<sup>35</sup> The methodology chosen to implement the Prophet’s judicial authority over the Muslims and Jews, different tribes, races and ethnicities, was the adoption of the pre-Islamic organizational system wherein “the city was divided into districts (or wards) for different tribes.”<sup>36</sup> In each of these wards or districts, a chief (*naḳīb*), several deputy chiefs (*‘arīf*) and a meeting place (*sakīfah*) were institutionalized. Thus the members of each tribe lived together in the same locality and away from other tribes. Hamidullah approves of this practice because while they were independent of each other, a central authority was still recognized: “these communes or councils were, to a great extent, autonomous and self-contained, forming, so to say, the units of a federation or even a confederation.”<sup>37</sup> He admits that the

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<sup>32</sup> Ibid., 48; Clause 23.

<sup>33</sup> Ibid., 52; Clause 42.

<sup>34</sup> Ibid., 18.

<sup>35</sup> Ibid., 48; Clause 25.

<sup>36</sup> Ibid., 15.

<sup>37</sup> Ibid., 27.

Prophet adopted aspects of the pre-Islamic system comprising of districts, chiefs, deputy chiefs and a meeting place. However, the Prophet's leadership altered the Arabian society by creating a central authority versus the older method of solving issues through private individuals or families: "The endless chain of vendetta or retaliation and counter-retaliations of olden times was completely put to an end."<sup>38</sup>

A second example illustrating the amalgamation of politics and religion in the Constitution is observed with the Jews acceptance of the Prophet as a military leader. The Prophet dedicates a number of clauses in the Constitution addressing the rights and privileges of the Jews in war. For instance, clauses 37 and 44 state that the Jews should be at peace or war with whoever the Muslims are at peace or war with.<sup>39</sup> Clause 45 states that the Muslims should help the Jews in war and vice versa.<sup>40</sup> The clause that receives much attention is clause 36a: "None of them [the Jews] shall go out to war save with the permission of Muhammad."<sup>41</sup> Hamidullah does not state whether this clause should be taken literally. Instead, he states the clause is "a little obscure in meaning, and may also yield the sense that the Jews themselves were not to declare war against anyone independently without the permission of the Prophet."<sup>42</sup> He does not verify this statement, but claims that if the Jews did agree to this term, the Prophet's political role as military commander was enhanced. Regardless of clause 36a, the Prophet was able to maintain military leadership over both Muslim and Jewish tribes, another political advancement.

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<sup>38</sup> Ibid., 36.

<sup>39</sup> Ibid., 51-52; Clauses 37 and 44.

<sup>40</sup> Ibid., 52; Clause 45.

<sup>41</sup> Ibid., 50

<sup>42</sup> Ibid., 34.

The inseparable nature of politics and religion in the Constitution is again observed concerning Yathrib as a sanctuary for the allied parties in the document (clause 39).<sup>43</sup> Sanctuary or *haram* has two distinct meanings, according to Hamidullah. He states that sanctuary is both a political and a religious term. It is political since it identifies an area with defined boundaries.<sup>44</sup> It is religious in the sense that everything within it should be sacred: “birds and beasts should not be hunted there; trees should not be cut down; bloodshed should not be allowed; and the people coming there should on no account be molested in this general refuge, even if they were criminals sought after.”<sup>45</sup> Makka and Tā’if were already considered sanctuaries prior to the Prophet’s entrance to Madinah.<sup>46</sup> While Ta’if’s boundaries were set-up by the Prophet himself, Makka’s territory was distinguished in pre-Islamic days. When the Prophet reached Madinah, he declared that the city should uphold the same politico-religious function and status. This, once again, illustrates Hamidullah’s theme.

Thus the Constitution of Madinah describes civil, religious, and political relations among the contracting parties. The Prophet maintained a judicial authority, acting as the final arbitrator in all of the major disputes between Muslims and Jews. Both religions thereby maintained their legal status since freedom of religion was extended to all. In military matters, the citizens of Madinah, Jews and Muslims, were obliged to render mutual physical and economic assistance to each other in addition to maintain their solidarity against all enemies. In administrative matters, the Prophet

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<sup>43</sup> Ibid., 51-52; Clause 39.

<sup>44</sup> Hamidullah, *The Battlefields of the Prophet*, 18.

<sup>45</sup> Ibid., 18.

<sup>46</sup> Ibid., 18.

acquired territory with distinct boundaries and distinct legal rulership over it. Thus the Prophet, although a religious figure, earned political advances by maintaining a judicial, military and administrative authority. Floyd H. Ross and Tynette Hills in *The Great Religions* further elucidate this view:

Muhammad was now in a position to exercise great power. He became ruler and priest, lawgiver and judge, prophet and commander-in-chief for the whole community. He drew up a constitution for his people, trying hard to unite the different groups into a close-knit fellowship. The people were to help each other against all enemies and in all difficulties. They were to abide by the decisions of Allah, as revealed to his prophet, Muhammad.<sup>47</sup>

The unit formed resulted as a political advancement for the Prophet but simultaneously it promoted a religion, incorporating moral and religious tolerance. In the first example, discussing the newly formed *ummah*, the Prophet established a political and religious unit comprising tribes with Muslims, Jews, most likely Jewish converts, and pagans, according to Hamidullah. In our previous example, the Prophet established the same type of unit but with the Jewish tribes. In addition, various races and ethnic groups were very diverse in this political unit. This stance is expounded upon in Hamidullah's closing remarks of his chapter entitled "The Political System of Islam" in *The Introduction to Islam*.

Islam seeks to establish a world community, with complete equality among peoples, without distinction of race, class, or country. It seeks to convert by persuasion, allowing no compulsion in religious beliefs, every individual being personally responsible to God. To Islam, government signifies a trust, a service, in which the functionaries are the servants of the people. According to Islam, it is the duty of every individual to make a constant effort for spreading the good and prevent evil; and God judges us according to our acts and intentions.<sup>48</sup>

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<sup>47</sup> Floyd H. Ross and Tynette Hills, *The Great Religions* (Greenwich: The Beacon Press, 1956), 165.

<sup>48</sup> Hamidullah, *Introduction to Islam*, 119.

Thus the superiority of the Prophet's political and religious achievements are given recognition. Phillip K. Hitti in *Makers of Arab History* expounds on this position:

History records the names of several men who founded religions, others who fathered nations, still others who instituted states; but if there was a man, other than Muhammad, who imitated all three institutions, history must have forgotten his name. The three founded by Muhammad were originally inextricably interwoven and to an extent interdependent. Throughout their career the first – religion – provided the integrating force and proved to be the most enduring.<sup>49</sup>

In view of what we have said above, it is apparent that the Prophet, as well as Islam, maintained a political and religious role. This seems to be the reason why Hamidullah is not apologetic to his readers concerning the Prophet's political function in the Constitution.

This study is designed to examine Hamidullah's major claims within his themes. Hamidullah claims that the Constitution of Madinah is the first written constitution in the world. Deciphering all the ingredients of the Constitution to portray or prove this claim is beyond the scope of this paper. Insight concerning the major enactments within the Constitution has already been given. For the purpose of this study it is necessary to limit the discussion to Hamidullah's stance as to why he proceeds to label this document, formulated by Prophet Muhammad in the first year of the Hijra, as the first written constitution in the world.<sup>50</sup> He examines the works of Solon, a Greek legislator (d. 560BC); Aristotle, a Greek philosopher (d. 322BC); and Kautilya an Indian emperor, (d.300BC); in order to illustrate his viewpoint. He remarks that Solon's work cannot possibly be considered as a constitution since Solon held the position of a delegate in a

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<sup>49</sup> Phillip K. Hitti, *Makers of Arab History* (New York: Harper and Row, 1971), 3.

<sup>50</sup> Hamidullah, *The First Written Constitution of the World*, 4 - 6.



governing body and not of a sovereign monarch. His political authority was meagre. Furthermore, the stipulations that Solon enacted within his 'Constitution' were not conclusive components required for the management of the State. Additionally, the verification of the 'Constitution's' publication is unknown. Second, Hamidullah boldly expresses the fact that Aristotle's 'Constitution' was not compiled by Aristotle but by a minister, and it does not fulfill the requirements of a constitution; rather, it is a historical document describing the city-state of Athens. He further comments on the inadequacy of the document by stating: "In his time, the city-state had long since ceased to exist, and Athens had become the capital of the ephemeral though vast empire of Alexander the Great."<sup>51</sup> The work of the Buddhist emperor Chandragupta or Kautilya who compiled the *Artha Sastra*, or *Political Economy*, is also scrutinized. Hamidullah states that this work resembles simply a set of laws similar to Mawardi's *Al-Ahkam As-Sultaniyah*, or Imam al-Harain Juwaini's *Ghiyath al-Umam*.<sup>52</sup> This examination illustrates how many of the constitutions that were formulated in history did not comprise the necessary components for a written constitution. In contrast, the Constitution of Madinah does possess the necessary factors, making it the first written constitution in the world, according to Hamidullah.

The Constitution of Madinah is portrayed as a unique and historically authentic document. Hamidullah highlights several of the main features and consequences of the Constitution of Madinah, each of which has a political dimension. His first

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<sup>51</sup> Ibid., 6.

<sup>52</sup> See 'Ali ibn Muhammad Mawardi, *al-Ahkam al-Sultaniyah wa-al-Wilayat al-Diniyah* (Bayrut: Dar al-Kitab al 'Arabi, 1994); Imam al-Haramayn al-Jawayni, *Ghiyath al-Umam fi Iltiyath al-Zulam* (Iskandariyah: Dar al Daw'ah, 1979).

pronouncement is that the Prophet, crowned with success, triumphantly terminated the anarchic tribal society in Madinah by unifying the Muslims, Jewish converts, and pagans into one unit or *ummah*. A subsequent major declaration is that the Jews were not only incorporated in the Constitution, but they acknowledged the Prophet as a judge, a military leader, and Madinah as a sanctuary, all political successes for the Prophet. The political nature of the Constitution illustrates the importance of the amalgamation of politics and religion in the making of an Islamic society, an aspect of constitutional law. The amalgamation of politics and religion in Islam is a vibrant theme throughout Hamidullah's legal works. Furthermore, he claims that the document is the first written constitution in the world since none of the previous 'Constitutions' possessed the necessary components required. Additionally, none of the other 'Constitutions' that Hamidullah discusses achieved the degree of success in application and acceptance as the Constitution of Madinah. The Constitution laid the political and administrative foundation for the Madinan community, extended its status as a foundation for Arabia, and subsequently over three continents of the world over which it ruled.<sup>53</sup> Hamidullah's claim that the Constitution of Madinah was the first constitution in the world is reiterated by Al-Tayib Zein al-Abdin:

It is difficult to accept the notion that the Constitution of Medina was no more than a typical tribal agreement common at the time of the Prophet and still is among certain tribes in South Arabia. The set of rules stated in the Agreement were the natural beginning for the centralized administration which emerged in Arabia. That is why it may not be a wild exaggeration to call it 'The First Written Constitution in the World'.<sup>54</sup>

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<sup>53</sup> Ibid., 4.

<sup>54</sup> Al-Tayib Zein Al-Abdin, "The Political Significance of the Constitution of Madinah," 152.

Hamidullah conducts thorough research and provides evidence for his unique and thought-provoking claims.

### The Indispensable Foundation of Law and Polity

A philosophical system according to which all religious knowledge is derived from divine revelation with the adherence to the authority of tradition, in matters of religion, morality and custom, may be understood in Islam as the Absolute Reference Frame (ARF), as described by Ziauddin Sardar in *The Future of Muslim Civilisation*.<sup>55</sup> The Absolute Reference Frame viewpoint of Islam emphasizes the adherence to the original sources for the system's survival as a way of life.<sup>56</sup> The sources comprise, the sacred and revealed message contained in the Qur'ān, the uncreated and Eternal Word of God, without temporal origin. Second, ARF emphasizes the exegesis of the sacred message and third, the exegesis upon elaboration by the actions and words of the Prophet. Last, the ARF defends all aspects derived from these two sources, aspects such as the Sharī'ah or Divine Law crystallized by the classical schools of *Fiqh* or Islamic jurisprudence. The vitality and importance of adhering to this viewpoint is succinctly apparent in the works of Hamidullah. This position is observed primarily through the classical sources that he consistently adheres to when supporting his claims. These sources will be analyzed in the last chapter of this thesis. Suffice it to say here that his major claims are based heavily on sources from the Qur'ān and *sunnah*, both of which he

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<sup>55</sup> Ziauddin Sardar, *The Future of Muslim Civilisation* (London: British Library Cataloguing in Publication Data, 1979), 23-39.

<sup>56</sup> *Ibid.*, 18-19

regards as the indispensable foundation for all Islamic law and polity. This approach may be observed in the study of constitutional law as, for example, he claims that the Constitution of Madinah is in fact a constitution and that the Prophet established a Madinan Islamic State.<sup>57</sup> The apparent theme throughout Hamidullah's literary works, that the Qur'ān and *sunnah* are the indispensable foundation of law and polity, will be discussed in conjunction with one of his claims that mirrors this viewpoint: the Islamic State that was established at the time of the Prophet was the first Islamic State in Islamic history. Hamidullah's book, *The Prophet's Establishing a State and Succession*, and four lectures out of his twelve lecture series that he gave in the 1980's at the Osmania University, compiled in *The Emergence of Islam*, will be examined.<sup>58</sup> Our analysis will commence by defining a constitutional state, according to modern political science, in order to perceive what factors constitute a state as it is described today. This definition will be utilized to compare and contrast Hamidullah's ARF viewpoint of a state in order to evaluate its indispensability. Thereafter, the Prophet's state will be examined by demonstrating how it became established and more specifically, by discussing the State's ability to formulate, institutionalize and apply laws. The segment will conclude, first, by analyzing the underlying message of Hamidullah's theme by examining the State at the time of the Prophet, and second, whether Hamidullah adheres to this viewpoint himself in practice, and what are the implications in the application of

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<sup>57</sup> The adherence of the Absolute Reference Frame in all religious spheres other than in Islamic Constitutional Law can be observed throughout *The Emergence of Islam* and *Introduction to Islam*.

<sup>58</sup> See "State and Administration," "Defence," Educational System," and Law-Making and Judiciary," in Muhammad Hamidullah, *The Emergence of Islam* (Delhi: Adam Publishers and Distributors, 1993).

the ARF viewpoint in modern-day times. The inculcation of the Absolute Reference Framework and its modern-day application remain a pertinent and very crucial topic.

The components required for the establishment and operation of the state, according to the definition of constitutional law provided by modern political science, are extremely detailed and significant:

Constitutional law is the body of rules, doctrines, and practices that govern the operation of political communities. In modern times by far the most important political community has been the national state. Modern constitutional law is the offspring of nationalism as well as of the idea that the state must protect certain fundamental rights of the individual. As national states have multiplied in number, so have constitutions and with them the body of constitutional law. But constitutional law originates today sometimes from non-national sources too, while the protection of individual rights has become the concern also of supranational institutions.<sup>59</sup>

The establishment and running of a state require decisive planning, the division of responsibilities, the development of departments, the protection of individual rights, the selection of a set of constructive aims and objectives, and the deciphering of what citizens are permitted. However, the key factors required for the operation of a state are the promulgating, the functioning and the judging of law in the legislative, executive, and judicial branches. In other words, a constitutional state is based on the rule of law.<sup>60</sup>

When inquiring whether or not the Prophet established the first Islamic State, it is necessary to probe, understand, and grasp the various components that the structure constituted. The chapter “The Qur’anic Concept of State” in *The Prophet’s Establishing a State and Succession* provides some insight to the kind of State

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<sup>59</sup> “Constitutional Law,” *Encyclopedia of Britannica*, 1998 ed.

<sup>60</sup> Kemel A. Faruki, *The Evolution of Islamic Constitutional Theory and Practice* (Karachi: National Publishing House Ltd., 1971), 3.

established by the Prophet. Hamidullah claims, “Therefore the conception of State which he [Muhammad] had and which he imposed on his followers may easily be traced in the verses of this sacred book.”<sup>61</sup> The Qur’ān requires that an Islamic State incorporate the following spheres: a legislature consisting of the Head of State, God and His last Prophet, Muhammad; a parliament for consultation in matters; a system that incorporates both spiritual and secular fields; laws for finances; and a politico-religious and moral character for the leadership of the state. If the Qur’ān is silent on a specific issue, the practice of past Prophets, kings and queens mentioned in the Qur’ān, provide the precedent for solving issues. Even the terms that the Prophet used for establishing fundamental Islamic concepts for his state were from the Qur’ān. Examples of this political nomenclature are *ummah* and *millah*, or political and religious community, and *khilafah* and *imam*, or head of the community.<sup>62</sup> In addition to the components of the state illustrated in the Qur’ān, the *sunnah* elaborates each aspect.<sup>63</sup> For instance, a financial department was developed into an organized system of charities. The rules of conduct during time of peace, war, and neutrality were promulgated, and insisted that they be adhered to when interacting with other communities.<sup>64</sup> The importance of gaining an education was stressed and institutionalized very early on.<sup>65</sup> Secretaries for finances, correspondence, and codifying the Qur’ān in the course of revelation were appointed. Governors were nominated by

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<sup>61</sup> Hamidullah, *The Prophet’s Establishing a State and His Succession*, 1.

<sup>62</sup> *Ibid.*, 15.

<sup>63</sup> See Muhammad Hamidullah, *Muhammad Rasulallah* (Hyderabad: Stockists, Habib, 1974), 109-118; Hamidullah, *The Prophet’s Establishing a State and His Succession*, 17-103.

<sup>64</sup> See Muhammad Hamidullah, *The Muslim Conduct of State*.

<sup>65</sup> See Muhammad Hamidullah, *Educational System in the Time of the Prophet* (Willow Grove: Education and Literacy for Muslims, 1994).

the Prophet to implement the law and teachings of Islam. Markets were inspected by the Prophet himself or sometimes by lady inspectors. The Prophet declared urbanization orders, such as requiring the streets large enough to allow at least two camels to pass each other. The various departments that were created were directed by the Prophet or entrusted to commanders.

These developments illustrate the many detailed spheres that comprised the state at the time of the Prophet encompassing sections such as a financial department, a military department, a type of economic department, institutions for teaching the religion and spreading the message, and a municipal or local section. The Prophet's leadership skills are apparent in the establishment of a variety of departments, his choice of leaders for these departments and finally, in the relationship between these leaders and himself. However, as mentioned in the definition of constitutional law, the most vital component required for the operation of a state is the process of formulating, implementing and institutionalizing laws.

Hamidullah outlines the entire judicial department comprising of the legislative branch, its development and criteria of management, and, finally, the type of rulership or government that organized the laws of the Madinan Islamic State. Eight legislative elements for the administration of the state that were formulated at the time of the Prophet are discussed. The most fundamental legislative components for the management of the State are the promulgations stated by God within the Qur'an, and the Prophet within the *hadith*. The legality of these components is stipulated within the Qur'an itself.<sup>66</sup> According to Hamidullah, these two factors comprise the foundation for

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<sup>66</sup> Ibid., 8; Qur'an 4:59.

the legislation of an Islamic State. As mentioned earlier, the Qur'ān demonstrates how the Prophet's actions or *sunnah* have become valid, and that his legal decisions are accepted as part of Islamic law.<sup>67</sup> *Qadīs* were appointed to put into effect the law and *muftīs* were required to explain the law. Both leaders were nominated by the Prophet to carry out this divine law.<sup>68</sup>

The method by which divine law was acknowledged and implemented is illustrated in the course of the institutionalization of charity, or the poor-tax due, *zakāt*. Hamidullah identifies four stages in the establishment of this institution. First, the Prophet promulgated the necessity of giving charity in his first sermon when he arrived in Madinah: "In order to save you from hell, you have to spend even a part of a date-fruit."<sup>69</sup> At this time there was no organized mechanism for the collection and distribution of the poor-tax due, *zakāt*, nor was there a set amount. The concept of *zakāt* was something simply of a moral nature. Second, the Prophet institutionalized the method of distributing charity to the poor. The Prophet and his family were exempt from receiving any part of this charity.<sup>70</sup> Third, charity became a religious, obligatory injunction that elevated it to a state duty. The Qur'ān stipulated a specific amount of money, or equivalent, and the time to give it. This revelation was received in the eighth year of Hijrah.<sup>71</sup> The verse also specifically stipulates the recipients of charity, identifies those who are responsible for collecting the taxes, and mentions exceptional cases requiring cases; cases such as ransoming Muslim citizen prisoners, the manumission of

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<sup>67</sup> Ibid., 12; Qur'ān 53:3, 59:7.

<sup>68</sup> Hamidullah, *The Emergence of Islam*, 222.

<sup>69</sup> Ibn Hishām referenced in Hamidullah, *The Prophet's Establishing a State and His Succession*, 83.

<sup>70</sup> Ibid., 84.

<sup>71</sup> Ibid., 84.



slaves, assisting citizens who are in need, providing for education and religious needs of the community, assisting the traveler in transit and giving to the state when the state may require some funds.<sup>72</sup> The fourth and last stage of the implementation of *zakāt* was the actual organization of this Qur'ānic stipulation. It involved posting tax collectors where Islamic rule reigned in order to collect the taxes, depositing the taxes at a central location and finally, re-distributing them again to those in need.<sup>73</sup> Thus, the institution of *zakāt* became a full-fledged religious duty, a well-organized institution and a legal enactment based on divine law. This example illustrates the function of the Qur'ān and *sunnah* in the institutionalization of a new, intricately designed legislative establishment.

The third aspect of legislation, the application of treaties such as the Treaty of Ḥudaiyah, is found within the *sunnah* of the Prophet. The treaty becomes part of the law and all subjects of the state must abide by the stipulations of the treaty.<sup>74</sup> The application of reciprocity, or accepting a foreign law with moral connotations within a different country or region, is the fourth component for legislation. Thus treaties and reciprocity, two important and distinct components for legislation, also part of the *sunnah*, became legal enactments.

Prior to the revelation of Islamic legal verses, pertaining to specific concerns at the time of the Prophet, the Prophet utilized two sources for legislation. The customs of

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<sup>72</sup> Qur'ān 9:60: "Nothing but this, that the *sadaqat* (government revenues coming from the Muslims) are for the needy (*fuqaraa'*), and poor (*masaakeen*), and those who work for the (taxes), and those whose hearts are to be won, and to (release) the necks from the yokes and those who are heavily charged, and in the path of God, and for the son of the road (wayfarer); a duty (imposed) by God, and God is knower, wise." (Hamidullah, 94).

<sup>73</sup> Ibid., 84.

<sup>74</sup> Hamidullah, *The Emergence of Islam*, 218.

Mecca that did not contradict the revealed portions of the Qur'ān or the *sunnah* were institutionalized by the Prophet. Hamidullah exclaims: "The customary law of Makkah was, therefore, the temporary law of Islam until such time as parts of it were specifically amended or abrogated."<sup>75</sup> *Sunan min qablikum*, or deducing the laws of the previous Prophets, kings, and queens, mentioned in the Qur'ān were also employed. The *sunan min qablikum* was preferred over applying the Makkan customs.<sup>76</sup> If the Prophet did not receive direct revelations, he would, if possible, follow the previous practices of the Prophets rather than the contemporary pagan Arab customs.<sup>77</sup> Hamidullah cites related injunctions concerning the state as mentioned in the Qur'ān. These vary from Adam attaining the role of vicegerent or steward, *khalifah* of God; or Joseph's era wherein there were kings, ministers and state prisons.<sup>78</sup> Examples also encompass the story of Moses and Talut who wished to establish a state but were forced to delay this idea since their own community was not ready for this establishment. In addition, Moses received the tablet of laws, and thus, "The necessity of a code of laws for a political agglomeration of men has always been recognized."<sup>79</sup> David and Solomon possessed both the spiritual rank of Prophet and temporal power of a king.<sup>80</sup> Furthermore, the Queen of Sheeba's government is mentioned in the Qur'ān.<sup>81</sup> In addition to elevating these practices over Makkan customs, when a specific law was not mentioned in the

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<sup>75</sup> Hamidullah, *The Emergence of Islam*, 212 – 213.

<sup>76</sup> *Ibid.*, 212 – 213.

<sup>77</sup> Hamidullah, *The Prophet's Establishing a State and His Succession*, 2.

<sup>78</sup> *Ibid.*, 2.

<sup>79</sup> *Ibid.*, 6.

<sup>80</sup> *Ibid.*, 4 - 5.

<sup>81</sup> *Ibid.*, 6.

Qur'ān and *sunnah*, we can assume that the purpose of Hamidullah's illustrating these points is to show that kingdoms, states, kings, and queens were always a part of Islamic history, thus laying a significant framework for a future Islamic State.

After the Prophet died and legal injunctions from the Qur'ān and *sunnah* terminated, *ijmā'* or the consensus of scholars on a doubted area, through the application of *qiyās*, analogical deduction, was institutionalized. Jurists who attempted to use their personal reasoning in conjunction with the Qur'ān and *sunnah* distinguished this path for lawmaking.<sup>82</sup> However, the basis for *ijmā'* and *qiyās* was established during the Prophet's era.<sup>83</sup>

Therefore eight components were established for the legislative department of Islam at the time of the Prophet: the Qur'ān, the *sunnah*, treaties, reciprocity, *sunnan min qablikum*, customs of Mecca which did not contradict the Qur'ān and *sunnah*, *ijmā'*, and *qiyās*. The study of *ijma* and *qiyās* opens the door for another subject, Islamic jurisprudence. Hamidullah does not discuss Islamic jurisprudence in his examination of the state; instead, he treats it as a separate subject. The institutionalization of the other six main legislative components during the time of the Prophet illustrates the high level and dynamics of the organization, and therefore the supremacy of the Islamic State, according to Hamidullah. This unique type of legislation, established in an Islamic State, is further expounded upon by Zakaria Bashier in *Sunshine at Madinah*: "Under this theory, sovereignty belongs to God Alone,

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<sup>82</sup> Hamidullah, *The Emergence of Islam*, 220 -221

<sup>83</sup> *Ibid.*, 223; 218.

man is Khalīfat-Allah, vicegerent of Allah, whose role is to enforce and implement the law of God.”<sup>84</sup>

In terms of the governing powers to uphold these laws, Hamidullah attempts to discuss the various type of government that existed in the Islamic State at the time of the Prophet. He describes democratic rule, theocratic rule, republican rule, monarchical rule, and collegial rule, declaring that these types of rulership do not comply with the type of government that the Prophet conducted.<sup>85</sup> Theoretically, democracy, wherein the political power resides in the people and is exercised by them directly, is not characteristic of Islamic rule since sovereignty belongs to God and not to man or the people. The people have the power to rule and limited ability to deduce laws via *idjtihād*, but the fundamental sources of power belong to God and His Prophet, as stated in the Qur’ān and *sunnah*, respectively. Autocracy, wherein there is absolute rule by one individual, does not characterize an Islamic State since the Prophet engaged in frequent consultation with his companions, and more importantly, implemented what he taught. A monarchical type of rulership was also not institutionalized.<sup>86</sup> Hamidullah does not view the Islamic State as a theocracy or a state wherein the people claim a deity as a ruler. He asserts that this type of rulership cannot fully comply with Islamic polity because of its implied philosophy; he believes that theocracy appears attractive on the surface but historically such a practice has failed, or has been accompanied by a multitude of political complications and repercussions. Hamidullah understands theocracy to have been a practice of early Judaism, with the appointment of judges who

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<sup>84</sup> Zakaria Bashier, *Sunshine at Madinah* (Leicester: The Islamic Foundation, 1990), 86.

<sup>85</sup> Hamidullah, *The Prophet’s Establishing a State and His Succession*, 27-29; 40-41.

<sup>86</sup> See Chapter Four for further discussion.

are said to have received divine revelations. He remarks that in Islam this phenomenon was true only during the Prophet's leadership and excludes all subsequent rulers. In addition, human reason was permitted in areas where the Qur'ān and *sunnah* were not promulgated.<sup>87</sup> He does not provide his readers with a specific type of government to parallel the Islamic State of the Prophet's era. He basically leaves the issue suspended. We hypothesize that the reason for this is that there is really no agreed label for this form of government. It is a government formulated for the founding and disseminating of a religion and therefore it remains in a special category. Consequently, since theocracy characterizes the Jewish faith, a special type of government should characterize the Islamic faith. We propose that this is an important aspect for research by future historians and by future lawmakers in the field of Islamic law. Hamidullah provides reasoning for his statement on another occasion proclaiming that any type of government is allowed as long as a righteous and qualified leadership is selected and the Shari'ah injunctions are closely followed.<sup>88</sup> If we examine other sources of literature describing the type of government, we discover similar descriptions at the time of the Prophet. Muhammad S. El-Awa, in *The Political System of an Islamic State*, does not advocate a type of government for the Prophet's era. Instead, in agreement with Hamidullah, he states that any type of government is allowed, and that the government selected is dependent on the conditions of an upright leader and the inclusion of Islamic law.<sup>89</sup> Muhammed Fazl-ur-rahman Ansari, in *The Quranic Foundations and Structure of*

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<sup>87</sup> Ibid., 114.

<sup>88</sup> Ibid., 40.

<sup>89</sup> Muhammad S. El-Awa, *On The Political System Of The Islamic State* (Riyadh: American Trust Publications, 1980), 27.

*Muslim Society*, provides an interesting perspective which incorporates two types of government that Hamidullah identifies. Ansari combines democratic and theocratic rule, classifying the type of government practiced at the time of the Prophet as a theodemocracy, implying that although there was divine rulership, the people also had power.<sup>90</sup>

Additional characteristics of the Madinan government were that it was composite in the sense that the Jewish tribes of Madinah were autonomous, confederal versus federal in the sense that various kings and leaders of different religions maintained their areas of rulership in conjunction with Islam and the people of Madinah,<sup>91</sup> and a *de jure* rulership of Mecca, since the pagans of Mecca maintained only a *de facto* rulership.<sup>92</sup>

The rulership within the Islamic government at the time of the Prophet, also commented on by Hamidullah, implemented the practice of a parliamentary style of government, the need for consultation or *shura*, if there was no precise ruling in the Qur'ān or *sunnah*. Hamidullah quotes verses from the Holy Qur'ān concerning *shura*, its importance and examples of the Prophet engaging in it.<sup>93</sup> Second, although *shura* is vital, the veto seems to remain with the ruler if a conflict arises.<sup>94</sup> However, the ruler should be chosen by *bay'a* or majority agreement. This practice had its foundation at

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<sup>90</sup> Muhammed Fazl-ur-rahman Ansari, *The Quranic Foundations and Structure of Muslim Society* (Karachi: Indust Educational Foundation), 193.

<sup>91</sup> *Ibid.*, 28.

<sup>92</sup> Hamidullah, *The Emergence of Islam*, 168.

<sup>93</sup> Hamidullah, *The Prophet's Establishing a State and His Succession*, 11; Qur'ān 3:159: And consult with them upon the conduct of affairs. And when Thou art resolved, then put thy trust in God. Lo! God loveth those who put their trust in Him; Qur'ān 43:36-38: Now whatever ye have been given is but a passing comfort for the life of the world and that which God hath is better and more lasting for those who believe and put their trust in their Lord. And those whose affairs are a matter of counsel, and who spend of what We have bestowed on them.

<sup>94</sup> *Ibid.*, 12; Qur'ān 6:117.

the time of the Prophet: “A prophet is nominated by God for life and even specifically recognized as such through what we call *bay’a* or contract of specific relations.”<sup>95</sup> Thus subsequent leaders are accepted through *bay’a*. Therefore, the ruler is one of outstanding character and knowledge so that he knows how to incorporate *shura*, and if necessary a decision is vetoed; this should be accepted as a decision that the majority of people would adhere to since the ruler was chosen by *bay’a*.

Hamidullah describes an elaborate foundation of an Islamic political system at the time of the Prophet. The necessary requirements for establishing an Islamic government, a righteous leader who upholds the Shari‘ah, as well his rights and obligations, have been illustrated. Hamidullah does not mention the upholding or judging of laws in his illustration of the state, but there are numerous examples throughout his other literary works to illustrate how the Prophet dealt with subjects who deviated from the law.<sup>96</sup>

It is evident that the government, upholding the responsibility to execute laws by legislative principles, is the most fundamental aspect in the making of a state. At the time of the Prophet, there existed a type of government with functional legislative principles. However, the system of government, similar to the legislative clauses at the time of the Prophet, takes on a special characteristic, unique only to the religion Islam. The laws are derived from the Qur’an and the *sunnah*, thus, the government and the legislative principles surround the function of worship and complete submission to God. Hamidullah attempts to portray the uniqueness of the Prophet’s government and its

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<sup>95</sup> Ibid., 28.

<sup>96</sup> See Hamidullah, *The Emergence of Islam*, 59-60.

ability to execute and maintain the law. His analysis is paralleled by El-Awa, who concentrates on the efficient legislative branch established for an Islamic State during the time of the Prophet:

The new state exercised legislative, judicial and executive powers, the same overall authority enjoyed by other states in the world, now or in the past. Even though these terms are the products of modern legal and constitutional systems, there is no doubt that the Islamic state ever since its institution was familiar with these three powers. The exercise of these powers established and regulated the basis of its juridical authority which were later stated and enunciated by the Muslim jurists' in the light of *Fiqh* (legal) and fundamental principles.<sup>97</sup>

The state that the Prophet formed beginning the first year of Hijra was complex in form, precise in management, progressive in ambition, and most importantly, an example encompassing the Absolute Reference Frame.

Since a state was established at the time of the Prophet and traditions or *hadith* are available to understand and appreciate this institution, the model and the procedure to follow in order to establish an Islamic State is the establishment of the Prophet's State. This is, therefore, classified as a *sunnah*, or practice of the Prophet, and the adoption of this *sunnah* is identified as adhering to the Absolute Reference Frame:

Islamic State, to me, means only the one the Muslims had in the time of the Prophet and his Rightly Guided caliphs. For, if the Holy Qur'an (33/21) says: 'there has been for you in the Messenger of God a beautiful model to follow', the Prophet himself has said (of Abu Dawud, 39/5): 'It is incumbent on you to follow my conduct and the conduct of the Rightly Guided Caliphs after me'. The political life is not excluded from this obligation, since-and fortunately for Islam-the Prophet has left, among other things, his conduct in founding and governing a State also.<sup>98</sup>

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<sup>97</sup> El-Awa, *On The Political System of The Islamic State*, 23.

<sup>98</sup> Muhammad Hamidullah, *The Prophet's Establishing a State and His Succession*, 17.



It is apparent that Hamidullah believes an Islamic State was fully established during the Prophet's lifetime.

We wish to examine why Hamidullah maintains the Absolute Reference Frame perspective in light of the preceding example, now that we have surveyed the state at the time of the Prophet, specifically its legislative and governing powers. We hypothesize that he merely wishes to illustrate the importance and successes of adhering to the Qur'ān and *sunnah* in all respects and throughout all epochs, although he allows the reader to decide for himself whether this perspective is dynamic and viable. We do not believe that Hamidullah is calling for complete return of the status quo of the Prophet's era, a carbon copy of the State, fossilized in all facets of life. In fact, his perspective contradicts such a response and instead adapts a system of constructive reasoning and advanced technological mechanisms so long as the principles and requirements of the Qur'ān and *sunnah* are completely followed.<sup>99</sup> Hamidullah accords professional recognition of and respect for the Madinan State and its social and political successes in the foundation of the fastest growing and once, the largest empire in the world. He believes that these successes are attributable to the injunctions of the Qur'ān and *sunnah*. Therefore, one should grasp these simple, yet crucial principles for the governing of an Islamic State. More importantly, one should also recognize the importance of adhering to the Qur'ān and *sunnah* in all facets of life. This thought can be further illustrated with the following statement in Hamidullah's Foreword: "There is a renaissance of science among contemporary Muslims. It is time perhaps that we study

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<sup>99</sup> Anis Ahmad, "Reorientation of Islamic History: Some Methodology Issues," *Islam: Source and Purpose of Knowledge* (Herndon: International Institute of Islamic Thought, 1982), 292-295.

anew how the Holy Prophet founded a State, how he governed it and its continuity, through succession, was assured.”<sup>100</sup> This quote reveals the fact that Hamidullah clearly adheres to the Absolute Reference Frame viewpoint of the State, for he encourages people while engaging in prospects for the future, not to forget the past. In other words, the same guidelines used for legislation and governing at the time of the Prophet should be used today. The statement illustrates Hamidullah’s emphasis upon the Qur’ān and *sunnah*, upon understanding it and adhering to it in the modern-day world. He indirectly emphasizes the vitality of adhering to the ARF in modern times by indirectly identifying himself to adhere to this philosophy. In his introduction of the chapter entitled “History of Jurisprudence” in *The Emergence of Islam*, he states: “We need not be apologetic about the sources of our faith. i.e. the Qur’ān and the *Ḥadīth*. No other people in the world can boast of having received the fundamentals of their faith with greater care and accuracy.”<sup>101</sup> He believes the Qur’ān is the word of God, that the *ḥadīth* is the word of the Prophet, and that combined they form the foundation of the religion of Islam. We believe Hamidullah wishes to convey the following concerning the Absolute Reference Frame, as expressed by Seyyed Hossein Nasr, although labelled as traditionalism:

As a result of the appearance of these [orientalist, fundamentalist, Islamicist, Marxist] and other contemporary interpretations of Islam, the task of understanding Islam as it has been lived and viewed traditionally over the centuries becomes ever more difficult. One knows who speaks for Western interpretations of Islam who for the modernist within the Islamic world and who for that whole spectrum of thought and action usually called fundamentalism. But then, who speaks for traditional Islam: the Islam lived for centuries by theologians and jurists, by philosophers and scientist, by artists and

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<sup>100</sup> Hamidullah, *The Prophet’s Establishing a State and His Succession*, v.

<sup>101</sup> Hamidullah, *The Emergence of Islam*, 61.

poets, by Sunnis and simple people of faith throughout the Islamic world during the fourteen centuries of Islamic history – the Islam which is in fact still followed by the vast majority of Muslims, from the Atlantic to the Pacific?<sup>102</sup>

The Absolute Reference Frame seeks the goal of Islamization of all disciplines with the complete Islamic intellectual tradition. This is combined with an in-depth critique of the modern world based on traditional principles. Hamidullah's method is subtle and effective. He illustrates the dynamics and vitality of the Madinan Islamic State, especially the strength of the pillars that established it. The founding pillars are directly based on the divine revelation, contained in the Qur'an and the *sunnah* of the Prophet. The Absolute Reference Frame, therefore, innervates every phase of these pillars. This philosophy, according to Hamidullah, comprises the framework that will ensure success for Muslims and the proper understanding of Islam.

### Unrecognized Pioneers of Law

The body of legal rules to be applied between sovereign states and other entities having international qualities is defined as international law, or public international law, or law of nations.<sup>103</sup> Modern political science records the formation of international law in the year 1856.<sup>104</sup> However, certain historians have recognized aspects of international law apparent before this year within a number of ancient civilizations. Reasoning for this view is based upon the fact that every civilization required laws and a

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<sup>102</sup> Seyyed Hossein Nasr, *Traditional Islam in the Modern World* (London: KPI Limited, 1987), vii-viii.

<sup>103</sup> "International Law," *Encyclopedia of Britannica*, 1998 ed.

<sup>104</sup> Muhammad Hamidullah, *The Muslim Conduct of State*, 69.

code of conduct, and every civilization interacted with its neighbouring states in time of war and peace, yet followed its own frame of legal conduct.<sup>105</sup> As time progressed, recognized methods of international behaviour, relating in particular to war and its conduct, became established. These behaviours consolidated into a system of law of nations, or international law.<sup>106</sup> Hamidullah proclaims that an identical situation was apparent at the time of the Prophet, commencing when the Prophet entered Madinah, the first year of Hijra. Initially, the Prophet experienced peace for a brief span, but shortly he was confronted with battle, the Battle of Badr. Following this battle, peace existed again. The two situations of peace and war continued to overlap, intertwined with periods of neutrality. Throughout these instances, questions arose as to what types of wars were permitted, what were the procedures of fighting in war, and what were the procedures to be carried out after the war terminated, in relation to issues such as prisoners of war. It was this relationship between peace, war, and neutrality and the application of the Prophet's example, during his life in Madinah, 1-10 Hijrah, that set the foundation for international law: "Rules of Islamic International Law, in the sense of the conduct of the state in war as well as in peace and neutrality, have existed from the very lifetime of the Holy Prophet."<sup>107</sup> Thus Hamidullah claims and demonstrates that the identical rules that were promulgated and required for the management of the

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<sup>105</sup> Baron S. A. Kroff, "An Introduction to the History of International Law," *American Journal of International Law*, XVIII (1924): 248; Majid Khadduri. *The Islamic Law of Nations* (Baltimore: Johns Hopkins Press, 1966), 4.

<sup>106</sup> Majid Khadduri, *War and Peace in The Law of Islam* (Baltimore: The Johns Hopkins Press, 1955), 42-43.

<sup>107</sup> Hamidullah, *The Muslim Conduct of State*, 68-69.

Prophet's State in the case of war, peace and neutrality, were the identical rules that were to be followed in all future Islamic States.

Another vital component is required for the creation of international law. Since international law requires that nations interact with each other in a mutually agreeable and acceptable manner, a certain degree of equality in international relations must be acquired in order for international law to maintain its legitimacy and not allow one nation to supersede other nations to the point of extinction.<sup>108</sup> It is this degree of equality that is reiterated by Hamidullah in the following remark:

Islam had recognized that all states, irrespective of religion or race, have similar rights and obligations. Unlike any other nation of antiquity, the public law of nations evolved by Muslims was not meant to regulate the conduct of a Muslim state with regard to Muslim states alone, excluding all the non-Muslim world.<sup>109</sup>

This quote reveals that the function of Islam was not only to deal with the people that the "Message" was first bestowed upon, namely, the Arabs in Arabia, 1 H / 7 AC. The laws promulgated for Islam, specifically the public law of nations, or international law and the rulings between states, were also promulgated to be all-encompassing thus to apply to interactions with all religions and all cultures at all times. This universal approach to rulership formed the basis of international law.

The origins of international law as a distinct field and as a distinct science, *Siyar*, are two of the many unrecognized contributions of the Muslims in the field of law that Hamidullah brings to light in his legal literary works. In the first segment of this

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<sup>108</sup> Baron de Montensquieu, *The Spirit of Law* (New York; Appleton and Co., 1990), 5.

<sup>109</sup> Hamidullah, *The Muslim Conduct of State*, vii-vii.

chapter, an illustration of how the Prophet formulated the first written Constitution in the world, according to Hamidullah, was portrayed. In the next chapter, how the early Muslim jurists formulated a unique legal jurisprudence will be portrayed. Thus another major theme observed throughout Hamidullah's legal literature is the attempt to inform the reader of the numerous unknown and unrecognized contributions that Muslim pioneers have made to the field of law. In the case of international law, for instance, he asserts that Islam's role in its formation is not recognized by Westerners, and that the credit has been given to other entities, disregarding Islam's contribution: "writers habitually begin with the Greek City-States, describe the Roman period as immediately following, and then all of a sudden talk of modern times, neglecting the gap of almost a thousand years that intervene and assert that during the Middle Ages: 'For an International Law there was ... no room and no need.'"<sup>110</sup> Whether his claims of Muslim achievements in the field of law are exaggerated or unscientifically based will be analyzed. Is he correct in his assertion that Muslim pioneers of law have been unrecognized for their phenomenal contributions to the field of law? In order to explore the legitimacy of Hamidullah's research and claims, an examination will be conducted by dissecting one of these so-called unrecognized Muslim contributions made to the field of law.

Two inter-related examples, the origins of international law, first as a distinct field and second as a science, will be explored, since Hamidullah attributes the greatest volume of writing, from the five books under study, to prove this claim. The concept of

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<sup>110</sup> Oppenheim, *International Law* quoted in Hamidullah, *The Muslim Conduct of State*, 66.

international law will be discussed in the segment concerning constitutional law since the laws formulated for Islamic international law were the same laws utilized for the operation of the Prophet's Islamic State, thus related to constitutional law. This segment will be approached differently from the preceding segments in order to comprehend the methodology that Hamidullah utilized to substantiate his claim. A case study approach will be conducted through which we will illustrate the major concepts and perspectives presented by Hamidullah on this subject.

Hamidullah undertakes an exhaustive study, to illustrate the rules of conduct in times of war, peace and neutrality, obtaining examples from the books of jurisprudence (*fiqh*) or classical sources, as observed in *The Muslim Conduct of State*. In his attempt to illustrate the rules of conduct during times of war, peace and neutrality, we believe that the first major issue that must be addressed is to determine if the terms are carefully and concisely defined. Second, the laws promulgated, connecting war, peace, and neutrality must be precisely outlined. Third, the documentation of each sphere should be fully established so other generations could learn and benefit from them. Fourth, and most importantly, the laws within the document would have to be implemented, signifying the validity of the injunctions. (Whether or not the actual act was successful, such as earning victory in war, this is not a necessary component to substantiate Hamidullah's claim in our opinion.) Fifth, the implementation of the document would have had to be initiated in 1 H / 7 AC or during the Prophet's era. Otherwise the initial efforts and credit would obviously belong to another entity, immediately toppling Hamidullah's claim. Finally, the application of the laws from the documentation of international law must be adhered to throughout history.

The intention of this study is not to compare Hamidullah's dictum on international law with other writers, for this would indeed be an endless endeavour; however, selected cross-referencing will be attempted. In addition, the purpose is not to disprove or prove his claim. Through analyzing the various spheres, in addition to the coherence between the three spheres, it will be portrayed how Hamidullah proves that international law was initiated by the Muslims in 1 H / 7 AC. An assessment of this claim will be undertaken to understand and verify its validity and to observe the pioneering efforts, if any, that the Muslims contributed to the field of law.

Emphasis will be based on one area, 'War,' in order to portray the intricacies involved. Hamidullah's sections on 'Peace' and 'Neutrality' also contain significant information. The section on peaceful relations of the State is divided into five segments that define the position of individuals within the state and their rights and duties during peaceful or non-hostile relations. The five segments are as follows:

- 1) Requirements for independence in an Islamic State.
- 2) The property that an Islamic State encompasses.
- 3) The jurisdiction that the Islamic State entails and extends over.
- 4) Equality within an Islamic State.
- 5) Diplomatic and commercial relations that the State may have to undergo.

In the segment on neutrality, Hamidullah asserts that although the Muslim jurists did not identify the concept of neutrality as an independent study in the second century Hijra, the jurists presented an enormous number of examples at the time of the Prophet



and the caliphs.<sup>111</sup> The importance of engaging in neutrality is also exemplified within the Qur'ān.<sup>112</sup> Hamidullah proclaims that he is probably the first to separate the issue and make it into an independent field of study.<sup>113</sup> Although the sections of peace and neutrality are very intricate, the section on war remains the most extensive of the three spheres. War is also a very crucial section, for it is considered by certain historians to be the initiating factor in the establishment of international law, since it is war that eventually precipitates the interaction between nations on a higher level.<sup>114</sup>

War, similar to any other area in Islam, requires a purpose and a set of guidelines or laws to govern it. In this way, war becomes part of a Muslim's duty towards God, fulfilling an act of goodness, or an act of faith. Hamidullah demonstrates this throughout his entire discussion on war. He quotes a *ḥadīth* on the authority of Ibn Taymiyyah to substantiate his claim: "I am the Prophet of mercy, I am the Prophet of battle" in addition to "Both I smile and I fight".<sup>115</sup> This illustrates the Prophet engaging at both ends of the spectrum when either case arises. The Prophet's act of compassion and conciliation is understandable, but one may speculate how and why he advocates warfare. Why is there this seemingly belligerent characteristic on the part of one who claims to be a Prophet? Hamidullah expands on this understanding of war in his Foreword to *The Battlefields of Prophet Muhammad*, asserting that war is only lawful when the case arises and under these circumstances it thus becomes absolutely necessary for someone to assume responsibility.<sup>116</sup> Furthermore, he asserts the advantages of a

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<sup>111</sup> Ibid., 289 – 298.

<sup>112</sup> Ibid., 287 – 288; Qur'ān: 59:11-12, 9:4, 8:58-60, 9:8-9, 4:88-91.

<sup>113</sup> Ibid., 281.

<sup>114</sup> Baron de Montensquieu, *The Spirit of Law*, 5.

<sup>115</sup> Hamidullah, *The Muslim Conduct of State*, 159.

<sup>116</sup> Muhammad Hamidullah, *The Battlefields of The Prophet Muhammad*, New Foreword.

Prophet going to battle. If the institution of warfare is divinely ordained, it sets the example for all people. Hamidullah attempts to convey the potential benefits of warfare if it is properly implemented, following and obeying God's laws. Evidence of such benefits lie in the statistics presented by Hamidullah, exemplifying the small number of people killed in the nine battles fought during the ten years that the Prophet lived in Madinah. Hamidullah concludes that the area conquered, as large as Europe except Russia, resulted in "less than 250 men killed on the battlefields on the enemy side," and "Loss of Muslims was at the rate of one martyr a month for a period of ten years at an average."<sup>117</sup> Thus when war is implemented with a reason and pursued with adherence to a set of criteria or laws, it is conceived as part of a Muslim's responsibility to God. War is then considered an important and beneficial act of worship in Islam.<sup>118</sup> One can now comprehend the importance, the necessity, the essence and the framework of war, according to Hamidullah.

Hamidullah cites the main Qur'ānic verses dealing with war and the various types of wars that are legal (2:190-195).<sup>119</sup> Thereafter he identifies and considers five

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<sup>117</sup> In *The Battlefields of The Prophet Muhammad* the statistics presented exclude the prisoners of war, the Banu Quraizha, after the battle of Khandaq and the Muslim missionaries killed at Raji' and Bi'r Ma'unah since these episodes did not take place on the battlefield (Hamidullah, 2-3).

<sup>118</sup> Hamidullah, *The Muslim Conduct of State*, 3-8, 18-37, 74-76.

<sup>119</sup> Qur'ān 2:190-195: "And fight in the path of God those who fight you, but do not transgress, verily God liketh not the transgressors. And slay them wherever ye find them, and chase them out from where they have chased you out – seeing that persecution is more serious than slaughter – yet fight them not near the Sacred Mosque (of the Ka'bah) unless (first) they fight you there; so if they fight you, slay them, such being the reward of the disbelievers. But if they cease, God is all-forgiving, all merciful (to the repentant). And fight them on until there is no more persecution, and that submission (din) is entirely to God; then if they cease, let there be no hostility except against the oppressors. The sacred month (of truce) for the sacred month, and sanctities are reciprocal (between you and your enemy); but if anyone transgresseth against you, transgress ye also against him equal to his transgression against you, and fear God, and know that God is with pious. And spend (of your subsistence) in the path of God, and throw not (yourselves) with your own hands (by avarice) in destruction, but do good, verily God liketh those who do good" (Hamidullah, 165).

types of lawful wars during the Prophet's life and defined in the Qur'anic verses. These consist of a defensive or a preventive war, a sympathetic war, a punitive war, an idealistic war, and last, a war that has not been officially terminated. A defensive or preventive war is a war wherein one party is compelling their position on another party. Examples of this type of war are Badr, Uḥud, Khaibar, Khandaq, Ḥunayn, Banū' Muṣṭaliq and Ta'if.<sup>120</sup> According to Hamidullah, this type of war describes most of the situations of warfare during the time of the Prophet. Sympathetic wars might apply to Muslims living in a non-Muslim country and who require the assistance of the Islamic states against the Muslim's non-Islamic government. This type of war is outlined in the Qur'an although Hamidullah states that he is unable to identify any examples during the time of the Prophet.<sup>121</sup> Punitive wars are wars wherein the circumstances constitute lawful reasons for waging a war: hypocrisy, apostasy (after intense discussion), refusing to pay taxes or to perform any other religious duty, rebellion, and breaking a covenant. The actualization of punitive wars did not occur until the time of the caliphs, although the foundation was embedded in the time of the Prophet.<sup>122</sup> Idealistic wars are wars encountered in order to defend the message of Islam, or "to uproot godlessness and association with God in His Divinity".<sup>123</sup> For example, in the case where a Muslim ambassador was murdered in the Byzantine territory, the Prophet wrote to the emperor Heraclius either to embrace Islam, or to become a tributary or not to intervene between Islam and his subjects. The emperor accepted none of these options, so the Prophet

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<sup>120</sup> Ibid., 167 – 168; See *The Battlefields of the Prophet Muhammad*, 35-202.

<sup>121</sup> Ibid., 168; Qur'an: 8:72, 4: 75-76.

<sup>122</sup> Ibid., 168 – 169. It is important to note that Hamidullah has an entire sub-section exemplifying apostasy, 174-177 and rebellion, 178-187.

<sup>123</sup> Ibid., 169.

engaged in warfare against him. Idealistic wars are not to be engaged for the purpose of compelling people to embrace Islam, and, of course, cannot be held for material ambitions such as expansion.<sup>124</sup> Wars that have not been officially terminated and recommence after a period of peace is observed in the example of the Battle of Tabuk.<sup>125</sup> The various types of wars that were made permissible or legal by the Prophet are diverse and intricate, yet are all given moral justification and provided with specific guidelines.

The laws promulgated in order to engage in the legal acts during war are even more diverse and intricate. Some laws were promulgated in the Qur'an, before and after war situations to guide or rectify an incident, and other laws were initiated and implemented by the Prophet. It is not necessary to distinguish between these categories since our focus is merely to illustrate the diversity and intricacy of the various laws that were implemented on the whole during the Prophet's era. The discussion is divided into four parts: laws to be followed during the time of war, laws to be followed to bring a war to an end, laws to be followed after a war in regards to prisoners of war, and finally, laws dealing with the aftermath of war, such as laws relating to occupied territory. This presentation is only a sample of the many legal enactments concerning war addressed by Hamidullah. The examples are taken from primary sources, the Qur'an, and Islamic law books, written in the formative years of Islam. An illustration of Hamidullah's research of the jurists who documented the Prophet's era, and the events referred to in the Qur'an, will simultaneously be portrayed in brackets. (Secondary sources researched

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<sup>124</sup> Ibid., 170 – 172; See further Muhammad Hamidullah, "The Friendly Relations of Islam with Christianity and How they Deteriorated," *Journal of the Pakistan Historical Society* I (1953): 41-45.

<sup>125</sup> Hamidullah, *The Muslim Conduct of State*, 166.

and documented by Hamidullah will not be portrayed.) This will assist us in understanding the reality of the events that occurred during the time of the Prophet.

First, on the commencement of war, it is necessary to declare war in all instances except in a defensive war, a punitive war, or a retaliatory war (Qur'an 8:58; Sarakhsi's *Sharḥ al-Siyar al-Kabir*, Muslim's *Ṣaḥīḥ*, Sarakhsi's *Mabsūṭ*).<sup>126</sup> However, to engage in war, the enemy must be at home and within the war zone.<sup>127</sup> At all costs war is prohibited when the enemy is a resident alien (Sarakhsi's *Sharḥ al-Siyar al-Kabir*, Kāsānī's *Badā'i' al-Ṣanā'a'*, Sarakhsi's *Mabsūṭ*).<sup>128</sup> There are a number of acts permitted during wartime, as promulgated during the Prophet's era, such as: ambush may be applied if the enemy is absent (Qur'an 9:5); the enemy may be besieged if he is present (Qur'an 9:5); certain elements of propaganda such as secret agents who are appointed to mislead or discourage the enemy (Qur'an 9: 60, Qur'an 8:60, Ibn Hajar's *Iṣābah*, Ṭabarī's *Ta'riḫ*, Sarakhsi's *Sharḥ al-Siyar al-Kabir*, Abū Ya'lā al-Farrā's *Al-Ahkām al-Sultāniyah*, Ibn al-Athīr's *Kāmil*); the usage of appropriate weapons and military tactics (Qur'an 8:60, Sarakhsi's *Sharḥ al-Siyar al-Kabir*, Ibn al-Athīr's *Kāmil*, Ibn Shaddād's *Al-Nawadir al-Sultāniyah*, Shaibānī's *Aṣl*, Ṭabarī's *Ikhtilāf al-Fuqahā'*, Ibn Hishām's *Sirah*, Ibn Ḥanbal's *Musnad*, Māwardī's *Al-Ahkām al-Sultāniyah*, Bukhārī, Ibn Sa'd); water supply of the soldiers may be cut off or be made unusable (Ibn Hishām's *Sirah*, Sarakhsi's *Sharḥ al-Siyar al-Kabir*); food and fodder may be obtained from the enemy country (Dīnawarī's *Al-Akbar al-Ṭiwād*, Tirmidhī); air warfare (al-Maqqarī's *Nafh al-Ṭīb*) and naval warfare (Ibn 'Asākir's *Ta'riḫ Dimasq*, Maqrīzī's

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<sup>126</sup> Ibid., 192 – 201.

<sup>128</sup> Ibid., 202 – 204.

*Imiā'*, Ibn Hishām's *Sirah*, Balādhurī's *Ansāb*, Ibn Ḥabīb's *Munammaq*, Balādhurī's *Futūḥa'l-Bulddn*, Ṭabarī's *Suyūṭī*, Ṭabarī's *Ta'rīkh*, Ibn Samajūn's *Jāmi'*, Ismā'īl Sarhang Bāshā's *Ḥaqā'iq al-Akḥbār an duwal al-Bihār*, Ibn Sa'd).<sup>129</sup> When the war is in the course of action, non-hostile intercourses with the enemy may be carried out such as: exchanging messages (Sarakhsī's *Mabsūt*, Sarakhsī's *Sharḥ al-Siyar al-Kabir*, Maḥmūd b. Hadidar's *Aḥkām al-Salatin wa al-Mulūk*); exchanging of prisoners (Mas'ūdi's *Tanabīr wa al-Ashrāf*); receiving permission to travel (Sarakhsī's *Sharḥ al-Siyar al-Kabir*); transporting goods; obtaining licenses to trade (Abū Yūuf's *Kharāj*); and making a truce (Sarakhsī's *Sharḥ al-Siyar al-Kabir*, Ṭabarī's *Ta'rīkh*, Suhailī's *Al-Rawḍ*, Abū 'Uбайд, Tirmidhī).<sup>130</sup> If women wish, they may partake in war, facilitating in matters such as assisting with the sick and dead, and to fight in emergency conditions (Sarakhsī's *Sharḥ al-Siyar al-Kabir*, Ibn Hishām's *Sirah*, 'Umar ibn Muḥammad's *Niṣāb al-'Ihtisāb*, Sarskhsī's *Al-Wajīz*, Sarakhsī's *Mabsūt*, Burhānuddīn al-Marghīnānīy's *Al-Muḥīṭ*, Ṭabarī's *Ta'rīkh*, Fatāwi's *Alamgirīyah*, Bukhārī).<sup>131</sup> A number of actions prohibited during warfare consist of: unnecessary cruel and tortuous ways of killing (Muslim's *Ṣaḥīḥ*), killing non-combatants such as women, children, and slaves (Sarakhsī's *Mabsūt*, Sarakhsī's *Sharḥ al-Siyar al-Kabir*); decapitating prisoners of war (Sarakhsī's *Mabsūt*, Sarakhsī's *Sharḥ al-Siyar al-Kabir*); mutilating animals and beasts (Sarakhsī's *Sharḥ al-Siyar al-Kabir*, Tirmidhī, Abū Dāwūd); damaging trees and harvest (Qur'ān 2:205, Sarakhsī's *Sharḥ al-Siyar al-Kabir*); severing the head of the enemy and sending it to higher authorities (Sarakhsī's *Mabsūt*, Sarakhsī's *Sharḥ al-Siyar al-Kabir*);

<sup>129</sup> Ibid., 223 – 232.

<sup>130</sup> Ibid., 255 – 262.

<sup>131</sup> Ibid., 252 – 253.

killing parents of the opposition (Sarakhsī's *Sharḥ al-Siyar al-Kabir*); performing acts forbidden under treaties as long as the treaty lasts (Sarakhsī's *Sharḥ al-Siyar al-Kabir*); committing adultery and fornication with captive women; and killing enemy hostages (Māwardī's *Al-Ahkām al-Sulṭānīyah*).<sup>132</sup>

If intentions prevail to terminate the war, this can be accomplished by: declaring peace ('Abd al-Qādir's *Khizānah*); embracing Islam (Qasṭallānī's *Al-Mawāhib Al-Danīr*, Ibn Tūlūn's *I'lam as-sā'ifīn 'an Kutub Sayyid al-mursalīn*, Ṭabarī's *Ta'rīkh*, Ibn Ḥanbal, Abū Dāwūd); annexation of territory; acceptance by the enemy of the suzerainty of the victorious party or formally settling the differences in a treaty of peace while both parties retain their independence.<sup>133</sup> When the war has terminated, certain procedures should be performed when interacting with the prisoners of war and their property. When dealing with the enemy as prisoners of war, Islamic law clearly prohibits applying the death penalty (Ibn Rusḥd's *Badā'i' al-Mujtahid*). The prisoners should be given liberal provisions such as food and protection from heat and cold while captive (Qur'ān 76: 5-9, Ṭabarī's *Ta'rīkh*, Bukhārī, Ibn Sa'd, Ibn al-Athīr). Families should not be separated from each other, and the right to demand labour from them is not allowed (Jāhīz's *Al-Bayān wa-t Tabyīn*, Sarakhsī). The prisoners of war also maintain the right to draw up wills for their property at home (Sarakhsī's *Al-Wajīz*).<sup>134</sup> Islamic law assigns to the discretion of the ruler whether the prisoners should be released on paying ransom or exchanged with Muslim prisoners. The Qur'ān recommends *released gratis* when

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<sup>132</sup> Ibid., 205 – 208.

<sup>133</sup> Ibid., 263 – 274.

<sup>134</sup> Ibid., 213 – 215.

hostilities have ceased.<sup>135</sup> There are traces of beheading and enslaving of prisoners at the time of the Prophet, but these actions were carried out only in proven cases of extreme enemy violations and crimes abhorrent to Islamic law (Abū Yūsuf, Sarakhsī, Ibn Rushd).<sup>136</sup> Quarter is allowed when the enemy requests it individually or *en masse*, and if surrender is unconditional. It is granted to the enemy person without their soliciting it through a general proclamation (Sarakhsī's *Mabsut*, Dabūsī's *Asrār*, Mas'ūdī's *Tanbah*, Abū Yūsuf's *Kharāj*, Ibn Hishām).<sup>137</sup> When discarding the enemy's bodies, one must treat them with respect. The dead should be buried (Abu Ya'lā's *Al-Ahkām Al-Sulṭānīyah*, Ṭabarī's *Ta'rikh*, Shaibānī's *Aṣl*, Bukhārī, Ibn Hanbal).<sup>138</sup>

There were also legal enactments to be followed after the war in regards to land. For instance, if the land is state property, or was occupied by conquest, the territory is to be transferred to the conqueror, but if the land is private property, the land's fate depends on the terms of surrender. In regards to the distribution of booty from war, *ghanimah*, the members of the army receive four-fifths and the State receives one-fifth of the share (Qur'an 8:41, Kāsānī's *Badā'i' al-Ṣanā'a*).<sup>139</sup> Surplus money is given to the soldiers when they perform additional works, *tanfil* (Kāsānī's *Badā'i' al-Ṣanā'a*, Sarakhsī's *Sharḥ al-Siyar al-Kabir*). Soldiers may also gain from the booty of the slain, *salab* (Sarakhsī's *Mabsūt*).<sup>140</sup> As for the booty acquired without a war, *fai'*, the head of

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<sup>135</sup> Ibid., 215 – 221.

<sup>136</sup> Ibid., 216 – 220.

<sup>137</sup> Ibid., 209 – 211.

<sup>138</sup> Ibid., 254.

<sup>139</sup> Ibid., 246.

<sup>140</sup> Ibid., 248.



the state makes the decision as to who are the recipients (Kāsānī's *Badā'i' al-Ṣanā'a*).<sup>141</sup>

The legal injunctions discussed thus far illustrate a sample of stipulations concerning war promulgated and implemented during the Prophet's era. We are able to see that purpose of war, the types of wars permitted, the procedures of war before, during and after, in addition to the relationship of these procedures with respect to people, property, and land are clearly defined. These injunctions, covering the numerous dimensions of war, are promulgated in the Qur'an and the *sunnah*, as observed from Hamidullah's research. They seem to be intricately diverse, detailed and governed by high standards of morality and justice. It is through an identical method that the legal injunctions were established for non-war situations or times of peace and for times of neutrality.<sup>142</sup> It is the interaction between these three spheres, peace, war and neutrality, in dealing with other tribes, societies and nations, at the time of the Prophet, that were the procedures to be followed with subsequent civilizations. This is what Hamidullah defines and illustrates as international law. He expounds on this formation at the time of the Prophet and its implementation throughout the history of Islam:

[Whether] in special monographs or as part of the manuals of Muslim law, International Law, both public and private, had to be developed and systemized very early, since religion and State both began in Islam simultaneously in the very lifetime of the Prophet. He had conquered three million square kilometers during his Madinan life of ten years, and his immediate successors continued expansion of the realm of Islam, and only fifteen years after his death, the caliph 'Uthman was ruling over three continents, from Andalus to the border of China, with Madinah as the metropolis. Since these Arab "barbarians" were more civilized than the most civilised peoples of the epoch, their law also kept pace with their territorial expansion. [It

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<sup>141</sup> Ibid., 246.

<sup>142</sup> See Hamidullah's section on Peace, 79 – 158 and Neutrality, 281 – 298.

is] enough to refer to the fact that the laws of Charlemagne look child's play in face of the code privately prepared by his contemporary Imam Muhammad ash-Shaibaniy, *qadi* of Harun ar-Rashid.<sup>143</sup>

Hamidullah illustrates how this development during this last decade of the Prophet's life was not a meagre incident; instead, it dictated the future civilization of Islam, specifically its dealings with other states. International law, as a political entity can be further illustrated by the fact that international law developed into a science, *Siyar*, engraved in the Islamic law books, and to be followed by all Islamic States who uphold the Shari'ah. The science of international law, *Siyar*, is another major historic contribution of the Muslims.

Muslim jurists formulated international law into a science entitled *Siyar* in the second century Hijrah according to Hamidullah.<sup>144</sup> The term *Siyar* is the plural form of *Sirāh* which was initially used to mean conduct and behaviour.<sup>145</sup> The term also was used to connote the conduct of rules in war and peace before and during the time of the Prophet.<sup>146</sup> Radiy-ud-Din as-Sarakhsī (d.483/1101) states that *Sirāh*, when used without an adjective, denotes the Prophet's actions but mainly within wars. In the second century, jurists utilized the term with reference to the conduct of rules in times of war and peace and thus to international law. This is illustrated by as-Sarakhsī in his book *Kitāb al-Mabsūt*:

Know that the word *Siyar* is the plural form of *Sirat*. (Imam Muhammad ash-Shaibānīy) has designed this chapter by it since it describes the *behaviour of the Muslims* in dealing with the Associators (non-Muslims) form among the belligerents as well as

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<sup>143</sup> Ibid., 65.

<sup>144</sup> Ibid., 9.

<sup>145</sup> Ibid., 9.

<sup>146</sup> Ibid., 10.

those of them who have made a pact (with Muslims) and live either as Resident Aliens or as non-Muslim Subjects; in dealing with Apostates who are the worst of infidels, since they abjure after acknowledgment (of Islam); and in dealing with Rebels whose position is less (reprehensible) than that of the Associators, although they be ignorant and in their contention on false ground.<sup>147</sup>

This portrays that *Siyar* became a distinct field in the second century. The term *Sirāh*, with its wide connotations concerning the Prophet's actions, was of great significance for the Muslim jurists. The first jurist to use *Siyar* as a specific field was Zayd ibn 'Alī, the grandson of Husayn and son of Zayn al-'Abīdin. Zayd ibn 'Alī wrote a chapter entitled *Kitāb al-Siyar* in his book *al-Majmū' fi al-Fiqh*. Hamidullah states that: "Zayd was the first to use the expression *Siyar* in the sense of international law, and that since his day the term has remained without any disagreement. Every author – Hanafi, Shafi'i, Māliki, Hanbafi, Shi'i – has used the same expression with the sole exception of the Khawarij."<sup>148</sup> From this synopsis of Hamidullah's development of international law or *Siyar*, as a science, it can be concluded that the Muslim jurists successfully formulated this task within the second century of the Islamic era.<sup>149</sup>

The diversity and intricacies involved in the study of Islamic international law have been presented in the preceding discussion. If we analyze other nations that

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<sup>147</sup> Ibid., 11.

<sup>148</sup> Hamidullah, *The Emergence of Islam*, 110.

<sup>149</sup> Other works on International Law was the *Kitāb al-Siyar* by Abū Ḥanīfah (d.150/767) and its refutation by Imām al-Awzā'ī (d.157). However, both of these books have not been preserved although excerpts and records of both of their thoughts have been discussed in Imam Shafi'i's book, *Kitāb al-Umm*. According to Hamidullah, Abū Ḥanīfah was the first jurist to produce an independent work on the subject since Zayd ibn 'Alī's work contained only one chapter on international law. Even though Abū Ḥanīfah's work has not been preserved, his students such as Ahmed Al-Shaybānī (d.189/804), Zufar and Ibrāhīm al-Farāzīy (d.188) have compiled books on the subject. Hamidullah addresses Al-Shaybānī's *Kitāb al-Siyar al-Saghīr* and *Kitāb al-Siyar al-Kabīr*. As-Saraakhsī, a Hanafi jurist of the fifth century also wrote *Kitāb al-Mubsūt* that is 30 volumes in addition to *Sharḥ al-Siyar al-Kabīr*. Other jurists such as Mālik b. Abas (d.175/795) and al-Wāqidīy (d.207) have written on *Siyar* but their works are not available to us but instead compiled in other books such as Shafi'i's *Kitāb al-Umm* (109-111).

modern scholarship gives the credit for international law, specifically the Greeks and the Romans, the Muslims were the first to actually formulate concise guidelines and rules combined with their application as international law, according to Hamidullah. He dedicates approximately five sub-chapters within part one of his book, *The Muslim Conduct of State*, to this subject. He states that the Greeks did in fact establish City-States within the Greek peninsula.<sup>150</sup> However, the inhabitants of these City-States encompassed individuals belonging to the same race, religion and language.<sup>151</sup> In addition, the Greeks' relationship with the rest of the world was very minute and quite inefficient.<sup>152</sup> This can be understood by Hamidullah's description of the Greek's opinion of non-Greeks: "All non-Greeks were termed barbarians, and Aristotle asserted that 'nature intended barbarians to be slaves' of the Greeks. Plato, although he advised his countrymen to be more lenient in their treatment of each other, never entertained the idea that non-Greeks deserved any share in the milder treatment he proposed."<sup>153</sup> Therefore, Hamidullah concludes that although the Greeks developed laws for conduct during war and peace, their attempts to regulate their relations with other societies during war and peace were futile. No laws were promulgated and the Greeks, as we understand, did not develop international law. The Romans differed from the Greeks in that they had laws to deal with other peoples, City-States, and States. However, whereas the laws enacted for times of peace, especially private law, were fully developed, the laws enacted for times of war were less developed. The reason

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<sup>150</sup> Ibid., 48.

<sup>151</sup> Ibid., 66.

<sup>152</sup> Ibid., 67.

<sup>153</sup> Ibid., 48-49.

for this is that the laws during war were based on the discretion of individual commanders, such as commanders during the wars between the Romans and Persians.<sup>154</sup> However, although the Romans extended their protection and laws to citizens belonging to other peoples and City-States, there were certain limitations. For instance, if a nation did not hold the position as an extension of the Roman Empire, it would not receive protection. One could eventually lose one's land or one's position and become a slave.<sup>155</sup> In a nut-shell, Hamidullah's opinion is as follows: "My impression, however, is that the Roman International Law of peace was a great advance on the Greek system (cf. Phillipson's work); yet the Roman law of war remained very much the same, recognizing no right for the belligerent, and using nothing but discretion regarding the non-Roman enemy."<sup>156</sup> The Romans did not fulfill the requirements for modern international law, according to the research presented by Hamidullah. He asserts that Islam, on the other hand, propagated the interaction of entities with other entities, regardless of race, religion, language, and customs. In summation, Islam played a profound role in developing international law and the science of international law.

The three spheres of Islamic international law--war, peace and neutrality--are fully explained and documented as legal injunctions thus revealing the intricacies involved in the development and the application of the law. Furthermore, Muslim jurists recorded the laws and formulated the science of international law or *Siyar* as an independent study in the second century. *Siyar* comprises part of the Shari'ah and it is to be adapted by Islamic States in modern times. Furthermore, Hamidullah states that

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<sup>154</sup> Ibid., 50.

<sup>155</sup> Ibid., 49.

<sup>156</sup> Ibid., 67.

several systems of international law did exist simultaneously in different parts of the globe throughout history, but he identifies the universality of the Islamic international law compared to the doctrines of international law practiced by the ancient European civilizations as a unique Islamic accomplishment. Although Hamidullah is aware that “The promulgation and execution of International Law with the consent of all States of the world is an ideal which has never been achieved even for a short term in the long annals of man,” he resolutely and conclusively asserts that international law and the science of international law, *Siyar*, were developed and applied by the Muslims at the time of the Prophet, and was formulated up to the second century Hijra, respectively.<sup>157</sup>

The numerous contributions of ancient civilizations to the field of international law is noted by Baron Kroff in his lecture before the Academy of International Law at The Hague on “The Historical Development of International Law From the Seventeenth Century.” He asserts that the international law known to Europe is actually a creation of systems from several ancient civilizations. In addition, he expresses deep regret that a concise documentation of the ancient civilizations’ contributions to international law has not yet been accomplished.<sup>158</sup> While Kroff focuses on how the Greek and Roman Empires contributed to this study, Hamidullah attempts to focus and document how Islam contributed to Islamic international law. In view of the above, there seems to be an undoubted case to hear Hamidullah’s plea concerning the unrecognized pioneering accomplishments of the Muslims, in this instance, in the field of international law.

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<sup>157</sup> Ibid., 3. Quotation on the same page.

<sup>158</sup> Kroff, “An Introduction to the History of International Law,” 247.

CHAPTER THREE

MUHAMMAD HAMIDULLAH AND THE PILLARS OF  
ISLAMIC CONSTITUTIONAL LAW

A number of elements in Islamic constitutional law required for the management of the Islamic State have been mentioned earlier. However, the method by which these laws are derived and the way in which they can adapt to modern-day needs, have not been discussed entirely. These concepts, the derivation of the law and the law's ability to adapt to contemporary times, are the actual foundation of Hamidullah's themes presented in Chapter Two. While the principal sources guiding the Shari'ah and Islamic constitutional law are the Qur'an and the *sunnah*,<sup>1</sup> after the death of the Prophet, the closure of Qur'anic revelations, coupled with the termination of Prophetic examples could, on the face of it, have resulted in a potential vacuum. However, the *sunnah*, as we shall see, contained an inbuilt tool--the approval of the use of *idjtihad*--which allowed the Muslim a clearly defined style for dealing with new problems and situations as they might arise. This formed the basis for the development of the science of Islamic Jurisprudence.<sup>2</sup> Islamic Jurisprudence, the method by which legal rulings are formulated, and its relationship to Islamic law, is explained by Taha Jabir al 'Alwani:

The science of source methodology in Islamic Jurisprudence (*uṣūl al fiqh*) has been defined as the aggregate, considered per se, of legal proofs and evidence that, when studied properly, will lead either to certain knowledge of a Shari'ah ruling or to at least a reasonable

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<sup>1</sup> Taha Jabir al 'Alwani, *Source Methodology in Islamic Jurisprudence*, 2<sup>nd</sup> ed. (Herndon: International Institute of Islamic Thought, 1993), 6-12.

<sup>2</sup> Wael Hallaq, *Islamic Legal Theories* (Cambridge, Cambridge University Press, 1997), 1.

assumption concerning the same; the manner by which such proofs are adduced, and the status of the adducer.<sup>3</sup>

Hamidullah considers Islamic Jurisprudence a unique science. His synopsis concerning Islamic Jurisprudence comprises the following: “the greatest contribution made by Muslims is perhaps jurisprudence. Law existed before the dawn of Islam but the principles of jurisprudence did not exist anywhere in the world. Even today we can say that it is the peculiar contribution of the Muslims who filled a great void in the science of law.”<sup>4</sup> Hamidullah further strengthens this point on another occasion by quoting Count Ostorrog, who stated in a lecture entitled “Roots of Law,” “jurisprudence was the gift of the Muslims to the world.”<sup>5</sup>

The emulation of Islamic Jurisprudence by Hamidullah and other renowned individuals is related to the historic origin of the science and the resilience of the science to suit all times without changing its primary implications. This requires the adherence to, and the implementation of, the term *idjtihād*, the main objective of Islamic Jurisprudence. It is the realization and understanding of Islamic Jurisprudence, in conjunction with *idjtihād*, that allows aspects of Islamic constitutional law that were implemented at the time of the Prophet to be applied today. This is an apparent and frequent theme within Hamidullah’s works. In addition, he claims that the first civilization known to form a concise Jurisprudence in history is Islam. The uniqueness of the development of Islamic Jurisprudence and its implementation will be examined in the following section.

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<sup>3</sup> Al ‘Alwānī, *Source Methodology in Islamic Jurisprudence*, 3.

<sup>4</sup> Muhammad Hamidullah, *The Emergence of Islam* (Delhi, Adam Publishers and Distributors, 1993), 81.

<sup>5</sup> *Ibid.*, 85.



We will examine the authenticity of the origins of Islamic Jurisprudence, specifically focusing on one of the four origins of Islamic Jurisprudence, the *ḥadīth*. The *ḥadīth* is the mechanism used to substantiate the foundation of law and polity, a persistent theme of Hamidullah's legal works, as observed in Chapter Two. Without asserting the *ḥadīth* authentic, the Absolute Reference Frame of Islam cannot exist. The study of the importance of *ḥadīth* remains a vital component of Hamidullah's thought as vibrantly and simultaneously expressed in ARF. Since he ascribes an entire study to this topic, it is relevant to discuss it as a separate unit. The study of *ḥadīth* persists as the heartbeat of ARF and a pillar of Hamidullah's study on Islamic constitutional law. In addition, the *isnād*, or the protective shell for *ḥadīth*, functioning as a powerful and authentic historical codification process unparalleled in history is another shattering claim made by Hamidullah. His position on the *isnād* also bears on the authenticity of the origins of Islamic Jurisprudence. Additionally, the knowledge of the origins of Islamic Jurisprudence are required in order to engage in *idjtihād*.

The closing stages of this chapter will take into account the unrecognized contributions that Muslims have made in the field of law from Chapters Two and Three. An attempt will be made to discover Hamidullah's reasoning behind these contributions not being represented properly by 'historians'. An attempt will be made to identify upon whom he places the blame for this dilemma and the reasons why.

Resilience of Islamic Jurisprudence

A mechanism is inherent within Islamic Jurisprudence to permit the application of Islamic law throughout all epochs. This mechanism is entitled *idjtihād*, or the ability to search for a legal opinion through the proper channels.<sup>6</sup> In order to perform *idjtihād* the jurist applies the Qur'ānic revelation(s) and / or *ḥadīth* and supplements a legal opinion within the appropriate guidelines.<sup>7</sup> The ability to utilize the Prophet's established framework for constitutional law throughout all epochs is by utilizing *idjtihād*. This forms the actual foundation for Hamidullah's themes as illustrated in the previous chapter, and serves as a fourth persistent theme within his works. It is imperative that Hamidullah engages in this discussion, reflecting his realization of the importance of *idjtihād*. Islamic Jurisprudence, the purpose of *idjtihād*, and the sole reason for its development, is also remarked upon as a crucial factor. Hamidullah claims that the Muslims were the first to formulate Jurisprudence. The function of *idjtihād* and its importance, coupled with the development of Islamic Jurisprudence, will be examined. Hamidullah discusses *idjtihād* in two chapters, "History of Jurisprudence" and "Jurisprudence and Ijtihad," in his book *The Emergence of Islam*.<sup>8</sup> These chapters are two speeches of a twelve lecture series delivered in the 1980's at the Osmania University, Hyderabad, India. Thus the following examination will consist of a brief analysis of the principal events encompassing the development of Islamic Jurisprudence in preparation for the use of *idjtihād*. Analyzing this data from the two speeches

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<sup>6</sup> Wael B. Hallaq. *The Gate of Idjtihād: A Study in Islamic Legal Theory* (University of Washington, 1983), 1. Based on the opinion of Muslim scholars.

<sup>7</sup> 'Abdur Raḥmān I. Doi, *Sharī'ah: The Islamic Law* (London: Ta Ha Publishers, 1984), 78-81.

<sup>8</sup> These two chapters form Hamidullah's dictum on *Idjithād* in the English language.

presented by Hamidullah in the 1980's may also permit an examination of the crystallization of Hamidullah's philosophical perspective for the final chapter, since it is at this time that the summit of his knowledge may have been attained.

We will first illustrate Hamidullah's view that the privilege of utilizing one's personal opinion for legal matters, *idjtihād*, originated at the time of the Prophet. Second, the function of *idjtihād* will be illustrated by examples from the formative period, the first two centuries of Islam. It is significant to note that unlike some historians who claim that the application of reason went through various stages in the form of *ra'y* until it evolved into its restricted usage in the form *idjtihād*,<sup>9</sup> Hamidullah adopts a different approach. Although he is aware of the occurrence of *ra'y*, unrestricted personal preference, he asserts that *idjtihād* was always present and implemented throughout the formative period. Third, the consolidation of Islamic Jurisprudence, initiated in the middle of the second century, will be illustrated. From this time onwards, *idjtihād* was applied with a set of guidelines developed from al-Imām Muḥammad ibn Idris al-Shāfi'ī's (d.204) *Kitab al-Risala*. Fourth, the determined attitude of individuals, as well as of the renowned minds and parties who toiled in the process of formulating the first Jurisprudence in man's history, according to Hamidullah, will be portrayed. Last, we will provide Hamidullah's solution for the application of *idjtihād* in modern times as a collective global effort by the *ulama*.

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<sup>9</sup> See Hallaq, *Islamic Legal Theories*, 1- 81; Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 1-74; Fazlur Rahman, *History of Islamic Methodology* (Lahore: Ripon Printing Ltd, 1965), 14.

After the Prophet's death, numerous issues arose that were not addressed during his lifetime.<sup>10</sup> These new issues may have arisen because of regional characteristics, cultural differences, and changes in administrative mechanisms. Therefore, an examination of the law and how it would deal with novel concerns required attention. This is understood by the famous *ḥadīth* involving the Prophet and Mu'ādh b. Jabal, a companion whom he described as the most knowledgeable person in the community on lawful and unlawful matters. The Prophet decided to send him to Yemen as a judge and asked Mu'ādh b. Jabal what would he do if he could not find a judgment in the Qur'ān or *sunnah*. He replied that he would then formulate his own personal judgment. This response was approved by the Prophet, demonstrating that Islamic law allows a degree of reasoning within the parameters of Islamic Jurisprudence.<sup>11</sup> In other words, the search for a legal opinion through the proper channels is permitted when a legal ruling is not present in the Qur'ān or *sunnah*. This demonstrates that the Prophet envisioned issues in the future that would not be directly addressed in the Qur'ān and *sunnah*, and, therefore, he not only did not reject Mu'ādh ibn Jabal's answer but positively approved of it. Hamidullah calls the use of reason on certain cases during the formative period as well as after *idjtihād*. This is based on the fact that Mu'ādh b. Jabal used the word *idjtihād* in his discussion with the Prophet.<sup>12</sup>

Hamidullah elaborates upon the application of reason during and after the Prophet's lifetime. For instance, judges and teachers, such as Abu Bakr and Mu'ādh b.

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<sup>10</sup> Hamidullah, *The Emergence of Islam*, 87.

<sup>11</sup> *Ibid.*, 85.

<sup>12</sup> *Ibid.*, 61; 85-86.

Jabal, were appointed by the Prophet and entrusted with conducting *idjtihād*.<sup>13</sup> On minute affairs, they were permitted to make their own verdicts, and on crucial issues, they would consult the Prophet.<sup>14</sup> In instances where the Prophet did not agree on the verdict given by the companions, the issue was simply changed. This is illustrated by the case involving the governor of Yemen, Dahhak, who gave a legal ruling to a woman whose husband was murdered. The legal ruling stated that she was not to receive any retributive confiscating for her husband's death, and that the money would be given to a male heir such as a son, father, or nephew of the deceased. This was the prevalent custom of the Arabs and at this time.<sup>15</sup> Although the Qur'ānic revelation for inheritance was not revealed, when the Prophet heard about this verdict, he wrote to the governor and stated that the verdict was wrong and that the woman should be entitled to inherit half the property of her late husband. Therefore, the Prophet himself engaged in using his own reasoning, provided it was in accordance to the spirit of the Qur'ān, and only when there was no ruling in the Qur'ān.<sup>16</sup> This illustrates that the application of restricted human reason or *idjtihād* was apparent at the time of the Prophet. *Idjtihād* was also implemented during the time period of the "four patriarchal caliphs" or the Rāshidūn, in the first half of the first century Hijrah. Along with examples of the implementation of *idjtihād*, Hamidullah provides examples of open collective consultation coupled with *idjtihād*, in accordance to the Qur'ān and *sunnah*, during this time period.<sup>17</sup> One case Hamidullah relates concerns an issue during the time of Caliph 'Umar b. al-Khaṭṭāb. Certain parents requested large amounts of money, *mahr*, from the

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<sup>13</sup> Ibid., 68.

<sup>14</sup> Ibid., 68.

<sup>15</sup> Ibid., 69.

<sup>16</sup> Ibid., 69.

<sup>17</sup> Ibid., 71.

prospective husband for their daughter before marriage. Caliph ‘Umar recognized the intensity of this social problem since this practice prevented many girls from getting married. Therefore ‘Umar limited the amount of money payable as *mahr*.

No objection was raised by any Companion of the Prophet (peace be upon him) but one day an old lady got up in the mosque and challenged ‘Umar’s right to promulgate such an ordinance. She cited a verse from the Holy Qur’ān which says: “... if you have given one of them a treasure, take not aught therefrom ...” (4:22) at the time of divorce. She argued that if God had allowed man to gift a treasure to a woman, ‘Umar did not have the authority to supersede or abrogate the law on the subject. ‘Umar immediately conceded that the woman was in the right and withdrew his order.”<sup>18</sup>

This demonstrates an attempt to apply reason abiding by the Qur’ān and *sunnah* during ‘Umar’s caliphate. This application derived its legitimacy from the time of the Prophet. Furthermore, it portrays that *idjtihād* was implemented throughout the formative period of Islam.

At the beginning of the second century, two different parties from Medina and Kufa were coordinating their efforts in an attempt to provide proper legal verdicts based on the *ḥadīth* that were available. Two outstanding jurists may be identified within each region and their works reflect the thinking of each of their schools. In Kūfa, the different opinions of Abū Ḥanīfa (d.150/767), Abū Yūsuf (d.182/798) and Ahmed al-Shaybānī (d.189/804) became attributed to Ḥanafi *Fiqh* or Abū Ḥanīfa. The surviving figure referred to the second century consensus of the traditional practice of the Muslims of Medina was attributed to Māliki *Fiqh* or Mālik b. Anas (d.175/795). In addition, the realization of utilizing reason without the available *ḥadīth*, thus causing

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<sup>18</sup> Ibid., 70.

conflicting opinions, occurred approximately during the middle of the second century.<sup>19</sup> As a result, two main variations of reasoning developed between two “camps.” The first usage was authoritative texts motivated by human reasoning and practical considerations by the “camp” *Ahl-al-Ra’y*. The second usage was reasoning based on authoritative texts and motivated by practical considerations by the “camp” *Ahl-al-Ḥadīth*.<sup>20</sup> Hamidullah’s interpretation for this conflict is the following: “Both were pulling in different directions because the votaries of reason were not well-acquainted with the *Ḥadīth*. *Ahl-al-Ra’y* presumed that the *ḥadīth* did not provide answers to all their questions. They resorted to reason and analogy and came out with new rulings.”<sup>21</sup> Hamidullah does not associate either camp, *Ahl-al-Ra’y* or *Ahl al-Ḥadīth*, with a specific school such as the Ḥanafī or Mālīkī school. Upon investigation, we have found certain historians associate *Ahl-al-Ḥadīth* with the Mālīkī school and *Ahl-al-Ra’y* with the Ḥanafī school.<sup>22</sup> However, with detailed research, it seems as though the jurists who emerged both greatly relied on *ḥadīth*.<sup>23</sup> Second, both “camps” used their personal opinion when there was no specific “traditional ruling” on the issues from the Qur’ān or *sunnah*. The main difference lies in the fact that more cases of using personal opinion can be cited by *Ahl-Al-Ra’y*, or in other words, individuals used it more often in Kūfa but not to a greater extent.<sup>24</sup> Therefore, a number of misconceptions are attributed to the titles *Ahl-al-Ḥadīth* and *Ahl-al-Ra’y*. The question arises whether this is the reason that Hamidullah does not associate a specific school with either “camp”. This issue shall

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<sup>19</sup> Ibid., 91-92.

<sup>20</sup> Ibid., 92.

<sup>21</sup> Ibid., 92.

<sup>22</sup> See Joseph Schacht, *Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Printing Ltd., 1950).

<sup>23</sup> Ansari, “Islamic Juristic Terminology Before Safī’ī: A Semantic Analysis With Special Reference to Kūfa” *Arabica*, 19 (1972): 288-290.

<sup>24</sup> Ansari, *The Early Development of Islamic Thought*, 269.

be investigated further in Chapter Four, “Hamidullah’s Methodological and Ideological Approach.” Regardless, in the second century, Shafi‘ī made efforts in the direction of combining both schools, since he comprehended the function of *ḥadīth* and he was an expert in analogy, inference, deduction, and *idjtihād*, as is demonstrated in his book *Kitab al-Risala*.<sup>25</sup> A middle ground was met on how to incorporate the use of reason without ignoring the *sunnah*, established with the publication of Shafi‘ī’s *Kitab al-Risala*. Thus the pendulum swinging eventually ended resulting in *idjtihād* having to be applied with various precautions. The utilization of personal opinion has produced an ocean of moral, religious, and legal injunctions in the formative period of Islam.<sup>26</sup> In addition, the usage of reason has caused controversy, turmoil and friction between various parties.<sup>27</sup> Through Hamidullah’s commentary on the use of reason, it is apparent that the study is very lengthy and diverse, but it is vital for understanding the development of the science of legal theory in Islam, *Uṣūl al-Fiqh*.

Hamidullah firmly asserts the uniqueness of Islamic Jurisprudence by proclaiming that Muslim jurists, during the first two centuries of Islam, were the first people to contribute a science for law.<sup>28</sup> He recognizes four books, written in the first two centuries of Islam, on the topic of the application of reason: *Kitab al-Ra’y* by Abū Ḥanīfah,<sup>29</sup> *Kitab al-Uṣul* by Shaibānī (a student of Abū Ḥanīfah), *Kitab al-Uṣul* by Abū Yūsuf (another student of Abū Ḥanīfah),<sup>30</sup> and *Kitab al-Risala* by Shafi‘ī.<sup>31</sup> The first

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<sup>25</sup> Hamidullah, *The Emergence of Islam*, 92; See Al-Shāfi‘ī’s, *Risāla*, ed. Majid Khadduri, 2<sup>nd</sup> ed. (Cambridge: Johns Hopkins Press, 1961).

<sup>26</sup> *Ibid.*, 67–71.

<sup>27</sup> *Ibid.*, 92.

<sup>28</sup> *Ibid.*, 84.

<sup>29</sup> *Ibid.*, 89.

<sup>30</sup> *Ibid.*, 90.

<sup>31</sup> *Ibid.*, 92.



three books have not reached us but are commented on within other sources of Islamic Jurisprudence. Hamidullah states: “Nothing new except commentaries have been published during the many centuries since the appearance of these books.” Therefore, the forefathers of Islamic Jurisprudence are Abū Ḥanīfa, his two students, Shaibānī and Abū Yūsuf and last, Shafī‘ī, according to Hamidullah. Additionally, it is their books that have formed the very foundation of Islamic Jurisprudence and for *idjtihād* to this very day. In regards to other lawmakers in history, Hamidullah agrees that there were traces of unwritten law or “customs and conventions” in the past, but such has been the contribution of every society since the beginning of time.<sup>32</sup> However, in terms of a written law or law that is enforced by someone, Islam is the first to produce a science in the field of law, in contrast to the laws of Iraq, Egypt, Rome, China and the rest of the ancient societies.<sup>33</sup> Hamidullah states, in reference to the most ancient specimen that has reached us, the law of Hamurabi, a king who ruled over Iraq: “It is significant in that it is the most ancient specimen of written law. But it does not mean that it is also the best.”<sup>34</sup> Also, in terms of the first lawmakers in the history of Europe, the Romans, Hamidullah states that their law lacked a resilient nature while adhering to the primary texts, and therefore, they had to change their laws comparatively often as they ruled over Europe, Africa and Asia. Man was issued the freedom to create laws and simultaneously the right to reject or accept the laws. This can be observed through the legal verdicts made by the main Roman lawmakers, Gaius and Justinian.<sup>35</sup>

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<sup>32</sup> Ibid., 82.

<sup>33</sup> Ibid., 84.

<sup>34</sup> Ibid., 83.

<sup>35</sup> Ibid., 62.

The use of reason through proper channels has been implemented since the time of the Prophet, with Shafi'i stipulating precise guidelines for its future application. However, Hamidullah cautions that *idjtihād* was never institutionalized as a collective effort, adhering to a global practice of *ijma*, throughout Islamic history. In the past, physical obstacles made it almost impossible to incorporate the opinions of all jurists. But in present times, with the availability of technology, these physical obstacles are minimized. Hamidullah's proposal of implementing *idjtihād* on a global level throughout all Muslim countries is interesting and seemingly plausible.<sup>36</sup> He suggests that first, each country should develop an association of jurists who are Muslims. Second, an international headquarters should be chosen. When a case appears without a legal ruling, the country's juridical body should first attempt to solve the problem. If they cannot resolve the issue, they should refer the concern to the international headquarters. Each country representing the international foundation should attempt to solve the problem and a unified front with dialogue should produce an international ruling. Hamidullah suggests that all reports of questions and juridical verdicts, in addition to the reasoning and proof provided for all cases, should be fully documented and published. This would allow for future analysis and usage of the legal rulings. Last, Hamidullah proposes that the jurists dealing in the international sphere of analyzing and declaring legal rulings should have the knowledge of Arabic and the language of communication should also be in Arabic. The country's jurists do not have to have this knowledge, but international representatives communicating the message to the headquarters and involved in international dialogues should. We believe this dilemma is

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<sup>36</sup> Ibid., 97-99.

emphasized since the language of the Qur'ān, Arabic, in many cases, cannot be translated properly into other languages. In order to fully understand the language and make the legal rulings, precision must be sought.<sup>37</sup> His call for Arabic proficiency emphasizes the need for full comprehension of the primary source material of the Qur'ān and *sunnah*. Hamidullah's idea, to implement an international headquarters for the implementation of *idjtihād* internationally, promises to be a potentially progressive plan.

From the preceding analysis of the development of a Jurisprudence and the main function that espoused it, *idjtihād*, the major players who toiled in the field and the books that they compiled, one is able to comprehend Hamidullah's views related to the conciseness, uniqueness and dynamics in the field of Islamic Jurisprudence.

Jurisprudence is considered to be yet another unrecognized pioneering effort by the Muslims to the field of law. It allows all dimensions of the Shari'ah, including Islamic constitutional law, to be resilient yet to uphold the original texts. The science and its connotations appear as crucial aspects for Hamidullah, since he proposes a method of implementing this institution worldwide. This will allow a complete, united, and universal application of the Shari'ah.

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<sup>37</sup> International Institute of Islamic Thought in Shaikh Muḥammad al Ghazālī, *A Thematic Commentary of the Qur'an* (Herndon: International Institute of Islamic Thought, 1997), 6-8; Khaled Bin Ibrahim Al-Sowailm in Ashfaque Ullah Syed, *Index of Qur'anic Topics* (Washington, Amana Publications, 1950), Foreword.

The Authenticity of the Origins of Islamic Constitutional Law

With A Special Focus On *Hadīth*

The four components that constitute the foundation of Islamic Jurisprudence are the Qur'ān, the *sunnah* of the Prophet, consensus, and analogy, according to the general Muslim view.<sup>38</sup> Although Hamidullah agrees that these four sources form the origins of Islamic Jurisprudence, he claims there are at least a dozen more sources such as the customs of Madinah, reciprocity, and *sunan min qablikum* or practices of the past Prophets mentioned in the Qur'ān.<sup>39</sup> The second element, the *sunnah*, mirrors what the Prophet said, what he did, and what he agreed to. The *ḥadīth*, literally meaning a saying, strictly speaking refers to what the Prophet said. Thus the collections of *ahādīth* include accounts of what the Prophet said and agreed to. *Ḥadīth* is sometimes used almost synonymously with the term *sunnah*. The study of the various dimensions and uses of *ḥadīth* is extensive and diverse, but it is essential for the understanding of Islamic legal theory. *Sunnah*, in its most commonly used framework by jurists, is defined as: “the norms set by the Prophet or norms deduced from the Prophet’s norms” or in other words, the actions of the Prophet.<sup>40</sup> *Ḥadīth* is the narration or the sayings of the life of the Prophet. Therefore every *sunnah*, or action of the Prophet, must be narrated by the Prophet or must have a *ḥadīth*. However, not every *ḥadīth*, or narration of the Prophet, will illustrate a *sunnah* or an action of the Prophet. The *ḥadīth*

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<sup>38</sup> M. Mustafa Azami, *On Shact's Origins of Muhammadan Jurisprudence*, (New York: John Wiley, 1985), 1.

<sup>39</sup> See Muhammad Hamidullah, “Sources of Islamic Law – A New Approach,” *The Islamic Quarterly*, 1<sup>st</sup> ser. 1 (1954).

<sup>40</sup> M. Mustafa Azami, *Studies in Early Ḥadīth Literature* (Beirut: al-Maktab al-Islami, 1968), 6.

comprises two associated parts: first, the *isnād*, or chain of transmitters of the *ḥadīth* tracing back to the Prophet's era, and, second, the *matn*, or the content of the *ḥadīth*, be it a *sunnah*, an action, an instruction, or an issue of concern of the Prophet. While the *matn*, or content of the *ḥadīth* continues to be of distinguishable importance, similarly the *isnād* or the process of transmitting and codifying the *ḥadīth* remains of tremendous value. The *isnād* deciphers whether the *ḥadīth* is authentic or not, and functions as its protective shell. An aspect of adhering to the foundations of law and polity is diligently abiding by the *sunnah*, which asserts the role of *ḥadīth* and its authenticity. Adhering to the Absolute Reference Frame of Islam is a constant, pulsating theme in Hamidullah's literary works, as highlighted in our segment entitled "Indispensable Foundation of Law and Polity" in Chapter Two. Hamidullah rigorously attempts to support his hypothesis that the origins of Islamic law, including that the *ḥadīth*, are authentic and based on a firm foundation. It is significant that he delves into this study, since the *isnād* preserves the *ḥadīth*, which, in effect, protects the *sunnah*, one of the components needed for the comprehension and implementation of Islamic Jurisprudence and Islamic law. The pillars of Islamic Jurisprudence, the *sunnah* of the Prophet along with the Qur'ān, consensus, and analogy, provide the origins for the Shari'ah, which includes constitutional law, the area of focus.

Hamidullah embarks on a specific study of *ḥadīth* in one of the earliest extant collections of *ḥadīth*, the *Sahifah Hammam ibn Munabbih*. Through this study, he demonstrates that at the time of the Prophet *ahādīth* were recorded as official documents,<sup>41</sup> and as unofficial documents by his companions.<sup>42</sup> In addition, he

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<sup>41</sup> See Constitution of the City-State of Medinah, Census of Muslims, Letters – Patent, Letters of

demonstrates the numerous efforts to record *ḥadīth* by the Prophet's companions within the first century Hijrah after the Prophet's death.<sup>43</sup> One of these efforts to record and preserve *ḥadīth* within the first century was performed by the *ṣaḥābī* Hammam ibn Munabbih. Hamidullah identifies the document of Hammam ibn Munabbih as the Sahifah of Hammam, and I will as well in order to avoid confusion.<sup>44</sup> The Sahifah of Hammam is a selection of approximately 140 *aḥādīth* on the topic of Islamic *adab* or behaviour. The *aḥādīth* were taught by Abū Hurayrah (d.58H / 677-8) in Medina to several students. Hammam ibn Munnabih, from Yemen, was one of them.

Focus will be concentrated on this pioneering work in order to demonstrate the various ramifications resulting from the preservation of *ḥadīth*. This will be accomplished first, by demonstrating the outstanding learning environment surrounding the knowledge of and adherence to the Qur'ān and *sunnah* established at the time of the Prophet. It was this environment that realized the importance of the codification of the *ḥadīth*. Second, Hamidullah's insightful method of proving the authenticity of the *ḥadīth* in his study of the Sahifah of Hammam will be illustrated. This, in effect, illustrates the roles of early *ḥadīth* compilers and their great commitment in preserving the *ḥadīth*. This should give substantial information concerning Hamidullah's methodological style for our final chapter. Third, as a result of proving the Sahifah of

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Proselytism, Correspondence with Jews, Instructions to Governors and Tarifs of Taxes referenced in *Sahifah Hammam ibn Munabbih*, 10 ed. (Paris: Centre Culturel Islamique, 1979), 25-31

<sup>42</sup> See An Ansarite, 'Abdullah ibn 'Amr ibn al-'As, Abu-Rafi', Anas ibn Mālik referenced in *Ibid.*, 33-41.

<sup>43</sup> See Jābir ibn 'Abdullah, Mother of the Faithful 'Aishah, Caliph Abū-Bakr, Caliph 'Umar, Caliph 'Ali, 'Abdullah ibn Abī Awfā, Samurah ibn Jundub, Sa'd ibn 'Ubāda, 'Abdullah ibn 'Umar, 'Abdullah ibn 'Abbas, al-Mughīra ibn Shu'ba, Abū-Bakra, 'Abdullah ibn Mas'ūd, Abū Hurayra and Hammam ibn Munabbih referenced in *Ibid.*, 41-65.

<sup>44</sup> The work under study, in its full title, is called *as-Sahifah as-Sahihah of Abu Hurairah* intended for Hammam ibn Munabbih or in English, *The Correct Tract of Abu Hurairah* intended for Hammam ibn Munabbih. However, Hammam ibn Munabbih preserved the compilation under the name of Sahifah Hammam which history has recorded and preserved (Hamidullah, 60-61).

Hamman's authenticity, the date of compilation of this collection of *ḥadīth* will be made apparent. Along with this study, Hamidullah wishes to illustrate the remarkable nature of the *isnād*, the intellect and devotion of the parties who made a painstaking and tremendous intellectual effort in the codification of *ḥadīth*, an effort which resulted in the transformation of an unlettered nation to a lettered nation.

Upon his arrival in Medina, the Prophet established a Mosque that contained the Suffah, the first residential university in Islam. Every mosque became a school, and in Medina at the time of the Prophet, nine mosques have been identified.<sup>45</sup> Teachers, both men and women, were available.<sup>46</sup> The Prophet himself, for the most part, held the largest number of classes and had his own scribes or a 'Secretarial Staff' to take down notes utilizing the Prophet's ink and pen that he always carried with him.<sup>47</sup> Numerous educational advancements such as the implementation of dotting the letters in order to decipher various letters were made.<sup>48</sup> Learning to read was deemed so essential that prisoners of war in the first battle of Islam, the Battle of Badr, were set free if they taught ten individuals "the art," or how to read.<sup>49</sup> Hence a very strong emphasis on the acquisition of knowledge developed during the Prophet's generation.

The initiative and motivation for this movement was comprehension of the Qur'ān and *sunnah*. Thus the preservation of the Qur'ān and *ḥadīth* became a matter of grave importance at the time of the Prophet. Hamidullah points to the memorization

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<sup>45</sup> Muhammad Hamidullah, *The Prophet's Establishing a State and His Succession* (Islamabad: National Hijra Council, 1988), 38.

<sup>46</sup> Muhammad Hamidullah, *Sahifah Hammam ibn Munnabih*, 20

<sup>47</sup> Ibid., On the authority of Ibn Hishām in *Sahifah Hammam ibn Munabbih*, 20-21.

<sup>48</sup> Ibid., 14-15; Muhammad Hamidullah, "A Suggestion to Complete Signs of Punctuation in the Copies of the Holy Qur'ān," *Hamdarad Islamicus* 1<sup>st</sup> ser. 9 (1986).

<sup>49</sup> Hamidullah, *Sahifah Hammam ibn Munabbih*, 17.

and the writing down of the Qur'ān at the time of the Prophet,<sup>50</sup> and goes on to explain that the identical procedure applied to the writing of *ḥadīth*, demonstrated by the numerous examples of individuals who recorded *aḥādīth*.<sup>51</sup> In such a conducive environment, it is not surprising to observe a revolution of learning and at a very rapid rate, as described in the following words:

It is not surprising that under circumstances such as these, the people of Arabia did not seem inclined toward the acquisition of learning in the pre-Islamic times. What however is surprising is that the period intervening between the days of dark ignorance and the later blazing forth into splendor of the Islamic arts and literature, was the shortest that history has ever recorded. No analogy of such a sudden transition from darkness to light could ever be found in any previous age. It is said that at the time of the advent of Islam, there were no more than 17 persons in the city of Mecca who knew how to read or write, and as regards the city of Medinah the number of those who knew the art was even smaller, as we have just mentioned. Such was the state of illiteracy from which there emerged the Arabic language, which as early as the 2<sup>nd</sup> century of the Hijrah was counted as one the richest languages of the world in matter of the sciences. How did this come about? The history of the miracle that was thus wrought has still to be narrated.<sup>52</sup>

Thus a new community, or rather, a new civilization was born. The foundation of the Muslim civilization was motivated by an ideology. This ideology received its foundations and historical justification from the law of the Qur'ān and the teachings of the Prophet. Therefore it is essential to conduct an examination of the process of preservation of the *ḥadīth* after the Prophet's death.

Hamam ibn Munnabih's Sahifah has been preserved in its original form and utilized extensively by numerous renowned individuals throughout history. Some of

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<sup>50</sup> Muhammad Hamidullah, *The Emergence of Islam* (Delhi: Adam Publishers and Distributors, 1993), 12-15.

<sup>51</sup> See Hamidullah, *Sahifah Hamam ibn Munabbih*, 100-107.

<sup>52</sup> *Ibid.*, 8.



these prominent historic figures include Ibn ‘Asakir (d.1176) and Salahuddin or Saladin (d.1193).<sup>53</sup> Hammam’s Sahifah was preserved from the time of Hammam in an independent format, as well as in amalgamation with other works. Hamidullah traveled to locate original parts of the Sahifah in Berlin, Damascus, Cairo, and Istanbul.<sup>54</sup> He also consulted parts of the Sahifah in Bukhārī’s *Sahih*, in Ibn Ḥanbal’s *Musnad*, in Muslim’s *Sahih*, and Ibn Kathir’s *Jami ‘al-Masanid wa’s-Sunan*.<sup>55</sup> His study on the various copies of the Sahifah of Hammam is extensive and meticulous, as he examines the authenticity of each copy. Hamidullah’s first attempt to illustrate the authenticity of the Sahifah of Hammam is by demonstrating its integration in both Bukhārī (d.870) and Muslim (d.875), the most renowned *ḥadīth* collections based on “distinguishing ‘sound’ *Ḥadīth* from others by scrutiny of the *isnāds*”.<sup>56</sup> The method Bukhārī and Muslim selected to incorporate parts of the Sahifah of Hammam in their *ḥadīth* collection was to organize the material under themes and subjects rather than amalgamating the works into a distinct unit. At the end of Hamidullah’s exhaustive study, one can discover that although the Sahifah of Hammam was segregated and scattered throughout Bukhari’s and Muslim’s books, the wording of each individual *ḥadīth*, every iota, remained identical.<sup>57</sup> The results of the study show that out of the 137 *aḥādīth* in the Sahifah, 99 are stated in both Bukhari and Muslim. Of these 99 *aḥādīth*, Bukhārī cites 22 different *aḥādīth*, Muslim cites 48 different *aḥādīth* and both cite 29 identical *aḥādīth*. These results illustrate that all the *aḥādīth* of the Sahifah of

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<sup>53</sup> Ibid., 67 – 68.

<sup>54</sup> Ibid., 88 – 97.

<sup>55</sup> Ibid., 97 –100.

<sup>56</sup> Montgomery Watt, *Islamic Philosophy and Theology*, 2<sup>nd</sup> ed. (Edinburgh: Edinburgh University Press, 1985), 57.

<sup>57</sup> See Hamidullah, *Sahifah Hammam ibn Munabbih*, 71-79.

Hamam, since they are identical in Bukhārī and Muslim, are authentic, regardless of the variation of different transmitters and the intervening gap of a number of centuries between them.<sup>58</sup>

Subsequently, Hamidullah identifies the chain of narrators in the Sahifah of Hamam, initiating with Bukhārī and ending with Hamam ibn Munabbih. The books in which they are recorded are also available. The chain is as follows: al-Bukhārī whose *al-Jāmi' as-Sahih* is printed, to Ahmad ibn Hanbal whose *Musnad* is printed, to 'Abd ar-Razzāq whose *Musannaf* is printed, to Ma 'mar ibn Rashīd whose *Jāmi'* is printed, along with the *Musannaf* of 'Abdur-Razzāq and last to Hamam ibn Munabbih whose *Sahifah* is presented. Hamidullah states that prior to the availability of sources, the authenticity of the *ḥadīth* could have been questioned. But now that we have a large collection of these books in their printed formats, the authenticity of these sources can be assured:

Supposing, al-Bukhari cites a *ḥadīth* on the authority of the above chain of sources. So long as these older sources were not available, a skeptic was certainly entitled to harbor doubts and say that perhaps al-Bukhari had not told the truth, but simply forged either the chain of the contents of both. But now that all the earlier sources are at our disposal, there is no possibility of imagining that al-Bukhari had mentioned anything by way of forging it, or narrating anything heard from forgers; on the contrary the whole chain of successive narrators and exhaustive sources, mounting from him up to the apex of an event bears the hall-mark of reality and fact. With the discovery in recent times of these earlier works, it is now possible for us to verify the truthfulness of each. One is forced to recognize them all as solidly genuine, and what glorious records of authenticity do they not prove to be!<sup>59</sup>

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<sup>58</sup> Ibid., 80.

<sup>59</sup> Ibid., 80-81.

The authenticity of the Sahifah of Hammam is reinforced once again. This also illustrates that both early and contemporary Islamic scholarship demand verification of the authenticity of the sources and identification of the origin of the literature.

Hamidullah continues his research of the Sahifah of Hammam in the Six Canonical Books of *Ḥadīth* (*Ṣaḥīḥ Sittah*). These consist of the *Ṣaḥīḥ* of Bukhari, *Ṣaḥīḥ* of Muslim, *Sunan* of Nasa'ī, *Sunan* of Abu Dawud, *Sunan* of Tirmidhi, and *Sunan* of Ibn Maja.<sup>60</sup> Hamidullah, on the authority of Abū Hurayrah as well as other companions, discovers that the Sahifah of Hammam is found verbatim within all of them.<sup>61</sup> Many narrators from the six books were involved in relating *aḥādīth* from the Sahifah of Hammam. Thus, to find at the end of this study that the *aḥādīth* are identical is an astounding discovery. This qualifies the hypothesis that it is very possible that the Sahifah of Hammam is not only authentic in the books of Bukhārī and Muslim but also in all of the Six Canonical Books of *Ḥadīth*. This illustrates the precision and reliability of the narration process, coupled with the reliability of the narrators.

In relation to this point Hamidullah claims that it is unnecessary to conduct cross-referencing among sources that have cited traditions from the Sahifah of Hammam that are cited on the authority of Hammam. Examples of such sources are: *Jāmi'* of Ma'mar, *Musannaf* of 'Abd ar-Razzāq, works of At-Tayalisi, Ibn Abī Shaibah, Ibn Rahuyeh and Abū 'Uwanah.<sup>62</sup> The reason for the absence of redundant cross-referencing among sources is that Hammam's collection, cited on the authority of Hammam, is clearly authentic in the books of Bukhārī and Muslim; therefore, all following sources

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<sup>60</sup> See M. Mustafa Azami, *Studies in Ḥadīth Methodology and Literature* (Plainfield: American Trust Publications, 1977), 106-107.

<sup>61</sup> *Ibid.*, 61-62.

<sup>62</sup> *Ibid.*, 80.

should follow this pattern.<sup>63</sup> Hamidullah's study is a comprehensive, objective, and scientific analysis of the works surrounding the Sahifah of Hammam and his conclusions substantiate the authenticity of the *ahādīth*, their mode of transmission, and the date of their compilation.

Now that the authenticity of the Sahifah of Hammam is established, it can be verified that it was recorded in the middle of the first century Hijra. This disproves the argument of the date originally established concerning when *ahādīth* were written down, two or three centuries after the death of the Prophet, according to some researchers.<sup>64</sup> Hamidullah abstains from identifying who made these statements, but he elaborates upon this subject in the following quote:

There have been those who have asserted that the *Ḥadīth* of the Holy Prophet started to be put down in writing only some two or three hundred years after the Prophet and on the basis of that presumption, did not hesitate to charge such personalities as Ibn Ḥanbal, al-Bukhārī, Muslim, at-Tirmidhī, etc. with fraudulence. They base their argument mostly on the assumption that there were no *Ḥadīth* written during the time of the Prophet or of his Companions.<sup>65</sup>

Hammam ibn Munnabih collected the Sahifah in approximately the middle of the first century of the Hijrah, before the death of Abū Hurayrah in 59H. Therefore, the Sahifah of Hammam conclusively annuls these hypotheses.

Another major point related to our topic concerns the *isnād*, the codification process for *ḥadīth*, and the advantages of the *isnād*, or chain of sources used for *ḥadīth*. Hamidullah analyzes the Damascus manuscript of the Sahifah and finds an entire chain

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<sup>63</sup> Ibid., 80.

<sup>64</sup> See Ignaz Goldziher, *Muslim Studies*, ed. S. M. Stern, trans. C. R. Barber and S. M. Stern, 2 vols (London: Allen & Urwin, 1967-71), II, 12-251; Joseph Schacht, *The Origins of Muhammad Jurisprudence* (Oxford: Clarendon Press, 1950); G. H. A. Juynboll, *Muslim Tradition: Studies in Chronology, Provenance and Authorship of Early Ḥadīth* (Cambridge University Press, 1983).

<sup>65</sup> Ibid., 61.

of sources extending over a period of five hundred and seventy years.<sup>66</sup> He challenges the adequacy of the *isnād* in this chain versus modern-day biographical accounts. He concludes that when one scrutinizes these modern day biographies, one cannot verify the work in totality unless one communicates with the author himself or obtains a certified copy of the document from the author. The compilation of *ḥadīth* with the *isnād* is different in the sense that it not only traces the origin of the material, but also traces the intermediaries between the narrator and the event. In addition, each narrator in the *isnād* must uphold a righteous character and a sound memory.<sup>67</sup> Hamidullah quotes Professor Zubair Siddiqi of the University of Calcutta who states that this well-developed codification process was formulated by the Muslims and it is, unknown to other civilizations, even those of present day.<sup>68</sup> Islamic scholarship requires levels of bibliographic reference. In the case of *ḥadīth*, Islamic scholarship requires that the entire *isnād* is traced to the point of origin, an attestation of the wholesomeness of the transmitters in the *isnād*, and last, the historical background of the report.

The study of the *ḥadīth* and the *sunnah* is the second most vital component of the origins of the Islamic legal code. Through Hamidullah's study of the Sahifah of Hammam, not only is he able to successfully prove the authenticity of the document and illustrate the date of its compilation to be in the middle of the first century, but he is

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<sup>66</sup> The *isnād* or chain of successive sources for the owner of the Damascus MS of the Sahifah of Hammam is the following: Muḥammad ibn 'Abd ar-Rahman al-Bandahi (panj-dehi), from Muhammad ibn Ahmad al-Isfahani, from 'Abd al-Wahāb ibn Muḥammad ibn Mindah, from his father Muhammad ibn Ishāq ibn Mindah, from Muḥammad ibn al-Ḥusain al-Qattan, from Ahmad ibn Yūsuf al-Sulamī, from 'Abd ar-Razzāq ibn Hammam ibn Nafi', from Ma'mam ibn Raḥīd, from Hammam ibn Munabbih, from Abū Hurayrah, from the Holy Prophet – the whole chain extending over a period of five hundred and seventy years (Hamidullah, 84). For further discussion, see Chapter Four,

<sup>67</sup> Hamidullah, *The Emergence of Islam*, 51.

<sup>68</sup> Muhammad Zubair, *As-Sair al-Hathith fi ta'rikh tadwin al-Hadith*, printed from the proceedings of Da'irat al-Ma'arif Conference, Hyderabad-Deccan, 1358 H/1939 AC (Hamidullah, 84 – 85).

also able to portray the reliability of the *isnād* thus proving the authenticity of many other *aḥādīth* related by the same narrators. The Sahifah of Hammam is the first and therefore the oldest collection of *ḥadīth* that has come down to us *in toto*.<sup>69</sup> Hamidullah is aware that not all *ḥadīth* are authentic because of the mechanism of collection and preservation that commenced at the time of the Prophet and continued thereafter.<sup>70</sup> Owing to this fact, the *ḥadīth* does not maintain the same level of authenticity as the Qur'ān.<sup>71</sup> However, as discussed earlier, there is evidence to establish the authenticity of many *aḥādīth*, such as the *aḥādīth* that were written down during the time of the Prophet, and immediately thereafter, in addition to those that maintained the same narrators. Last, Hamidullah declares the following phenomenal conclusion in reference to the scientific precision of the *isnād*:

If one were to compare the historical methods used for the time of the Prophet with modern, - newspaper reports not exempt from wilful misrepresentations, official documents intentionally misleading and ambiguous, historians suffering from insufficiency of documents, unverifiable statements, - the *Ḥadīth* will prove to have come down to us in a way that nothing more was humanly possible.<sup>72</sup>

This illustrates that if one uses the identical mechanism of assessment with modern day text-books, and research documents, we will immediately realize the superiority and precision of the mechanism used for the assessment of the Qur'ān and *ḥadīth*. Another historic claim by Hamidullah in relation to the previous comment is the following:

It cannot be controverted that what the members of the 'Unlettered Community' of early Muslims have recorded of the *Ḥadīth* of the Holy Prophet, on the basis of what they had seen with their eyes or heard by their ears, is far more voluminous than what men of other

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<sup>69</sup> Ibid., 60.

<sup>70</sup> Hamidullah, *The Emergence of Islam*, 31.

<sup>71</sup> Ibid., 32.

<sup>72</sup> Hamidullah, *Sahifah Hammam ibn Munabbih*, 111.

faiths have recorded of their apostles or founders of religions during their life time.<sup>73</sup>

This claim illustrates the amazing characteristic of the *isnād* and its ability to supersede all other codification processes substantiating the uniqueness of the *ḥadīth*, and the *sunnah*. Finally, the methodology that Hamidullah selected to perform his study is unique and thorough. While his work is not an historical overview of the *ḥadīth*, his study nevertheless is scholarly. He is able to prove his claims in a unique manner by analyzing solely one study, the Sahifah of Hammam. Hamidullah's methodology employs profound insight to prove that the origin of Islamic constitutional law, the *sunnah*, is indeed authentic.

#### Further Implications: Recognizing Legal Contributions

Throughout Hamidullah's legal works, frequent comparisons are made between aspects of the constitutional law of Islam and other ancient peoples, civilizations and religions. Hamidullah engages in this analysis in order to illustrate and emphasize Muslim contribution in the field of law, and to educate and inform Muslims and non-Muslims about Islam. We wish to discover his rationalization of the apparently unrecognized or diminutive coverage of Islamic constitutional law by 'historians'. Hamidullah does not refer to the nature of these historians. One may hypothesize that he is referring to most Western or European historians, since Islamic sources in many parts of the East produce Islamic literature. We will analyze whether instances of

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<sup>73</sup> Ibid., 24.

omission, misrepresentation, and / or misconceptions in relation to Muslims and Islamic law characterize the works of Western scholarship.

Four contributions to the field of law that have been identified in this study and attributed to Islam are as follows: the initiation of international law as a field and second as a science; the establishment of the first written constitution in the world; and the formulation of the science Islamic Jurisprudence. Hamidullah demonstrates how historians in the field of law and Jurisprudence have disregarded these contributions. In each of these cases, he proclaims that although the ancient civilizations such as Greeks and the Romans played an initial part in the study and understanding of these subjects, the Muslims were the first to actually formulate concise guidelines and rules for application. It is, therefore, not surprising to find Hamidullah declaring in *The Muslim Conduct of State* that Islam's position in the making of international law is not recognized by historians: "writers habitually begin with the Greek City-States, describe the Roman period as immediately following and then all of a sudden talk of modern times, neglecting the gap of almost a thousand years that intervenes and assert that during the Middle Ages: 'For an International Law there was ... no room and no need.'"<sup>74</sup> In addition, Hamidullah concludes his section on "Islam in the History of International Law" by stating the following: "There we must seek for the link between the Roman and the Modern Periods, and there must we recognize the origin of the epoch-making change in the concept of international law. And we see the role played by Islam in the world-history of international law."<sup>75</sup> It is evident that Hamidullah strongly believes that historians have neglected the Muslims' contributions. We still question,

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<sup>74</sup> Hamidullah, *The Muslim Conduct of State*, 66.

<sup>75</sup> *Ibid.*, 72.



according to Hamidullah, as to why historians have neglected numerous achievements made by the Muslims in the field of constitutional law?

As one furthers investigation into Hamidullah's position on the codification of Muslim history, surprising evidence is discovered (in the Preface of the Sixth Edition to *The Muslim Conduct of State*) that provides an answer to the search. Hamidullah remarks on the lack of knowledge by historians on the subject of Islamic international law: "Specialists and historians from other cultural groups do pay it homage, yet the neglect by the Muslims of their own culture is alone responsible for the despise of which the Muslims may be victims at a given moment. The fault is then the Muslims' own."<sup>76</sup> Whether there are apparent misconceptions, misrepresentations or omissions of Islam's or Muslims' achievements in history, and whether or not they came about by accident or by deliberate, strategic manoeuvring by historians, Hamidullah places the onus for the decrepit condition on the Muslim individual and the *ummah*. He maintains the need for consistent rigor in problem solving and the establishment of a complete Islamic paradigm. This stance can be further illustrated by his position on sectarianism within communities: "There is only one solution for sectarianism and that is that instead of criticizing others you should concentrate on yourself. Do not allow yourself to be attacked by this disease. Do not consider yourself entirely in the right and others entirely in the wrong ...."<sup>77</sup> This illustrates that Hamidullah believes that through a sincere effort of each individual to change the process, a rejuvenation of the Islamic heritage, culture, and law could be transformed into an effective reality. Thus the position that the Muslims and Islam have fallen into is not primarily the fault of

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<sup>76</sup> Ibid., iv.

<sup>77</sup> Hamidullah, *The Emergence of Islam*, 201.

historians, the West, or the European codification process, but of the Muslims themselves. Hamidullah is acting as one of the catalysts to change this pernicious situation.

Hamidullah's philosophy mirrors the man. This can be exemplified by his study of the authenticity of *ḥadīth*. When opposed against, he attempts to disprove his opponents' arguments through a very meticulous and insightful method, hesitating to identify those against whom the claims are directed.<sup>78</sup> This is observed in a question asked from the floor after his lecture on the topic 'History of *Ḥadīth*,' as recorded in *The Emergence of Islam*. The individual asked Hamidullah to explain the arguments used by individuals who state *aḥādīth* were compiled three hundred years after the Prophet. Hamidullah responded to the question with the following answer:

Such people consider the Sahih of Bukhari which belongs to the third Hijrah century as the oldest book of *Ḥadīth*. But they ignore the period intervening between Bukhari and the Prophet (peace be upon him) during which Bukhari's teacher, and in turn the teacher of Bukhari's teacher, collected the *Ḥadīth*. The missing links have since been provided. The old objection raised by Goldziher on this score is no longer valid.

Let me tell you an anecdote in this connection. I wrote a paper in German which was published in a German journal a few years ago. It dealt with the same issue and argued that the old thesis of *Ḥadīth* having been compiled three hundred years after the event has been eroded. A German professor published a paper in the same journal some six months after the publications of my article. He repeated the old arguments about the unreliability of *Ḥadīth*.

It has always been my principle to refrain from criticizing anyone. I try to present facts in a manner that a critic would find an answer to his objections in the narration itself. When the article of the German professor was published the editor of the journal wrote a footnote suggesting to the author that he should read my article published in a particular issue of the journal. One can judge for oneself the principle which is best pursued in such cases.<sup>79</sup>

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<sup>78</sup> Hamidullah, *Sahifah Hammam ibn Munabbih*, Foreword.

<sup>79</sup> Hamidullah, *The Emergence of Islam*, 57-58.

This quote adequately portrays the ongoing debate and concern over the compilation of *ḥadīth* and the many other issues in the field of Islamic law. The constant bombardment does not seem to disturb Hamidullah, or to deter his style.

It can be concluded that Hamidullah believes that in the process to transform the politically debilitated chaos and circuitous religious cauldron of the *ummah*, each individual Muslim male and female, young or old, intellectual or lay, has a unique contribution to make. Although Hamidullah is cognizant of the deleterious and destructive impact on Muslims and Islam wrought by the Crusades,<sup>80</sup> the subsequent Western colonization of most of the Islamic world,<sup>81</sup> and the Mogul devastation of great portions of the political and educational institutions of Islamic lands and peoples,<sup>82</sup> he persistently maintains his thesis that the reason for the unrecognized Islamic legal contributions is the responsibility of the *ummah*, specifically each individual.

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<sup>80</sup> Hamidullah, *The Introduction to Islam*, 4<sup>th</sup> ed. (Lahore: Sh. Muhammad Ashraf, 1974), 201.

<sup>81</sup> *Ibid.*, 176.

<sup>82</sup> Hamidullah, *The Muslim Conduct of State*, 148-149.

## CHAPTER FOUR

### HAMIDULLAH'S METHODOLOGICAL AND IDEOLOGICAL APPROACH

This study encompasses an analysis of an individual through his historical and political environment, as well as his political achievements, and literary works. Chapter One dealt with particular aspects relating to Hamidullah's environment in addition to his political achievements. Chapters Two and Three examined five of Hamidullah's major literary themes and claims relating to Islamic constitutional law. The examination of Hamidullah's life and literary works has provided information with which a purview of the man can be established in order to appreciate and understand him in totality. Having assembled the data in the preceding chapters, Hamidullah's methodology and ideology may now be deduced in order to understand his thought and evaluate his scholarship.

To undertake this analysis, this chapter examines his methodological tools, such as the nature of his sources and how he chose to utilize them, the structural organization of his texts, and the presentation style of his claims and thought. It is necessary to include some of his other works in order to undertake this analysis. It may be argued that even with a thorough examination of his methodological tools, only superficial evidence for our final examination may be provided. Nevertheless, an attempt will be made to present some unique and valuable data about the writer, in regards to his methodological approach, ideological perceptions, and worldview. In light of the above, this thesis shall address its principal task, which is to offer a critical assessment of Hamidullah's scholarship.

### The Nature of Sources

If there is any aspect of Hamidullah's works that approaches thoroughness it is the depth of his research. This can be demonstrated by the numerous sources he utilizes. Before delving into this discussion, it is important to analyze how he documents his sources. Each of his five books under study is adequately footnoted, except for *The Emergence of Islam*, which is a collection of speeches. However, even in this volume, he presents appropriate references in support of his statements and claims throughout his lectures. For example, when he makes a historical claim regarding Islamic jurisprudence, he refers to Count Ostrorog, who states that the Muslims were the first to contribute jurisprudence to the world. He adequately documents this claim during his speech, which he delivered without using notes, stating that this claim was written in an English book entitled, *Angora Reform*, 1928, by the French professor, Count Ostrorog.<sup>1</sup> This procedure is mirrored throughout Hamidullah's speeches, in which he appropriately references primary sources including Qur'anic *āyat*.

In Hamidullah's four other works under study, all maintain extensive bibliographic references except for *The Prophet's Establishing a State and His Succession*. While we cannot be sure of the reason for this exception, even in this work, all major statements and claims are fully footnoted. Perhaps the reason this book does not contain a bibliography is because certain chapters, such as *The First Written Constitution of the World*, were inserted at a later date. This particular chapter contains

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<sup>1</sup> See Muhammad Hamidullah, *The Emergence of Islam* (Delhi: Adam Publishers and Distributors, 1993), 85.

an adequate bibliography that may have conflicted with his other chapters. The three works analyzed in this thesis that include bibliographic data are: *The Muslim Conduct of State*, *The First Written Constitution in the World*, and *Sahifah Hammam ibn Munabbih*. Since *The Muslim Conduct of State* is Hamidullah's Ph.D. dissertation and therefore necessarily incorporates extensive references and *The First Written Constitution in the World* is mainly a booklet type of presentation (which still includes an adequate number of sources), it is appropriate to take a closer look at the sources presented in *Sahifah Hammam ibn Munabbih*. This analysis is intended to provide a sample of Hamidullah's choice of sources and the thorough research that he undertakes in order to visualize the larger picture.

In *Sahifah Hammam ibn Munabbih*, Hamidullah references 60 sources in his bibliography. Of these 60 sources, 45 sources are primary sources, based solely on the Qur'an and *sunnah*, and 15 sources are secondary sources, suggesting that Hamidullah concentrates on primary sources. Of the 15 secondary sources that he cites, five are his own works. It is appropriate to question his use of secondary sources. First, we question his reason for incorporating much of his own material. Perhaps he feels that he has already researched the various areas thoroughly and therefore does not require stating additional sources. We also question why his secondary sources are limited versus his primary sources. In comparison, in *The Muslim Conduct of State* and *The First Written Constitution of the World*, the number of secondary sources cited in the bibliography seems to be almost equal to the number of primary sources. However, *Sahifah Hammam ibn Munabbih* requires a study of a primary source document, and

therefore extensive cross-referencing with the use of secondary sources is unnecessary. Nonetheless, Hamidullah's concentration on primary sources, heavily based on the Qur'ān and *sunnah* in *Sahifah Hammam ibn Munabbih*, gives us an insight into his extensive knowledge of and adherence to primary sources.

This method is repeated throughout his works, as illustrated in *The Muslim Conduct of State* and *The First Written Constitution of the World*. In these works, the reader easily can discern Hamidullah's adherence to primary sources, heavily based on the Qur'ān and *sunnah*, in stating his claims. We question, however, whether in these two latter books, if the European sources are equal to the non-European sources in the bibliography, why the count seems unequal within the footnotes of these works; the primary sources seem to fill the pages. We have observed that although Hamidullah possesses knowledge of the secondary sources, including European sources, he attempts his utmost to refrain from using them if they tend to inclusively object to his thinking. However, he tends to use the sources to prove a point that he wishes to support, as in the example of Count Ostrorog quoted above. This is a unique and interesting style. Another example can be observed in Hamidullah's choice for his opening remarks in *The Muslim Conduct of State*. He quotes John Macdonell, who states that as time progresses in communities, regardless of whether they are tribes, city-states, or states, customs and behaviours that are exhibited between neighbours harden into laws, requiring judicial laws and the formation of States, which fully supports Hamidullah's thesis statement.<sup>2</sup> However, if Hamidullah locates a source that opposes what he

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<sup>2</sup> Muhammad Hamidullah, *The Muslim Conduct of State*, 7<sup>th</sup> ed. (Lahore: Sh. Muhammad Ashraf, 1987), 3.

believes, he refrains from stating the name of the person who made the point. It is crucial to note that Hamidullah does not avoid stating the point. He chooses to either simply state the point and avoids stating who proclaimed it or he states the name of who made the negation and does not state the point. He neither rebuts the various opinions in a vindictive way nor states to whom they are made against. For instance, in *The First Written Constitution in the World*, he engages in this practice: “It is unnecessary to discuss here the remarks of these German, Dutch, Italian, English and other writers. I just propose to express here my own humble opinion on the questions.”<sup>3</sup> It is necessary to assert that Hamidullah does have knowledge of the secondary sources: “The importance of it [Constitution of Medina] has been felt by the European Judeo-Christians even more than by the Muslim historians. Beside Wellhausen, Mueller, Grimme, Sprenger, Wensick, Caetani, Buhl—see the Bibliography at the end—and others, a German historian, Ranke, in the course of a short history of the world, has felt it necessary to mention it [the Constitution of Medina] in considerable detail.”<sup>4</sup> Therefore, although Hamidullah chooses not to delve into the secondary sources, he does acknowledge them. This issue will be examined in detail within the subsequent segments concerning Hamidullah’s style and methodological approach.

In addition to his use of primary and secondary sources, his research is extensive, thorough, and spans many different languages. In *The First Written Constitution in the World*, Hamidullah classifies the primary sources he cites in his Bibliography into the following sub-headings: Arabic, Urdu, English, French, German, Dutch, Italian, and

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<sup>3</sup> Ibid., 10.

<sup>4</sup> Muhammad Hamidullah, *The First Written Constitution of the World* (Lahore: Sh. Muhammad Ashraf, 1968), 11.



Turkish. It is interesting to note that his section of secondary sources in “Western Languages,” as he phrases it, encompasses renowned scholars, including Reuben Levy, Majid Khadduri, Alfred Guillaume, Julius Wellhausen, Frants Buhl, Alois Sprenger, Arent Jan Wensick, Leone Caetani, and Salih Tug. In *The Muslim Conduct of State*, his Ph.D. dissertation, he divides his bibliography into the following sub-headings:

1) “Arabic, Urdu, Persian and Turkish Works,” and 2) “Works in European Languages consisting of English, French, German, Dutch and Italian.” These examples demonstrate that Hamidullah possesses knowledge of a variety of languages that would inevitably enhance the quality of his writing -- a quality unique to only a few scholars. Thus Hamidullah utilizes mainly primary sources to substantiate his claims although he is widely read in works written by contemporary and renowned writers in the field. In addition, he has researched sources that explain ancient times and peoples. Previous chapters have already illustrated Hamidullah’s comparisons of aspects of Islamic constitutional law with ancient civilizations. Neither new languages nor travel distances handicapped Hamidullah’s efforts to locate his primary sources as witnessed by his discovery of four original copies of the *Sahifah Hammam ibn Munnabih* in Berlin, Damascus, Cairo, and Istanbul.<sup>5</sup> We may conclude from analyzing our five works under study that Hamidullah’s research is thorough, and that although his sources concentrate on primary sources, he also possesses and demonstrates profound knowledge of secondary sources.

An analysis of these five works and the sources Hamidullah used can provide some insight into his procedures for addressing most of his research topics. For

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<sup>5</sup> Ibid., 89-97.

instance, in his article entitled, “Muhammad Ibn Ishaq (The Biographer of the Holy Prophet),” he incorporates in his bibliography Arabic, Urdu, Turkish, German, and English sources.<sup>6</sup> In his article, “The Nasi’, The Hijrah Calendar and the Need of Preparing A New Concordance for the Hijrah and Gregorian Eras,” he presents research from several concordances in French, German, Spanish, Italian, Rumanian, Russian, and English, again exemplifying his great knowledge of a variety of Western authors and his comprehension of several Western languages.<sup>7</sup> In *The Battlefields of the Prophet Muhammad*, he completed his research by travelling on several occasions to the battle sites, taking pictures to incorporate in his book, carefully examining the areas where the battles were fought, and searching for explanations as exemplified in the following quote:

Many people suppose that there is a passage from behind Mount Uhud, which leads directly into the inner opening where the Prophet Muhammad had camped and is narrowly separated from the battleground. In 1932 and again in 1939 I wandered for hours and days together and climbed rocks, and am sure that there is no possibility whatsoever of the entrance of cavalry that way. In 1946-47, I circumambulated the whole mountain, and assured myself that the north of the mount is a solid and high wall and there is no opening whatever to allow for the penetration of man, much less of horse.<sup>8</sup>

This demonstrates his determination to document and portray historical reality through efficient and painstaking research. In his article “The Name of the Pharaoh Who Died By Drowning,” Hamidullah shows his knowledge of the Bible while comparing it with

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<sup>6</sup> Muhammad Hamidullah, “Muhammad Ibn Ishaq (The Biographer of the Holy Prophet),” *Journal of the Pakistan Historical Society* 77 (1967).

<sup>7</sup> Muhammad Hamidullah, “The Nasi’, The Hijrah Calendar and the Need of Preparing A New Concordance for the Hijrah and Gregorian Eras,” *The Journal of the Pakistan Historical Society* 16 (1968): 14 – 15.

<sup>8</sup> See Muhammad Hamidullah, *The Battlefields of the Prophet Muhammad*, 3<sup>rd</sup> ed. (New Delhi: Nusrat Ali Nasri, 1983), 54.

the Qur'ān, exemplifying his knowledge and understanding of other scriptures.<sup>9</sup> These examples illustrate a minute sample of Hamidullah's extensive knowledge of his sources and his attempt to incorporate adequate research into each new subject area. In addition, each new subject of discussion demonstrates his profound knowledge of a variety of spheres outside the realm of Islamic constitutional law.

### The Utilization of the Sources

It is evident that Hamidullah focuses heavily on primary sources as his major choice for information. A question arises, however, as to how he wishes to utilize the sources. Does he use them for his benefit in order to portray his own thought? Deciphering exactly how Hamidullah uses these primary sources is a challenging task. Analyzing several examples may shed some light on the subject that will lend some insight into this area of investigation.

In Hamidullah's case, all major concepts and claims are bound by the Qur'ān and *ḥadīth* as observed in Chapters Two and Three. Furthermore, examples that substantiate his points are heavily anchored in the classical sources. Hamidullah on no account declares something that contradicts these two sources. However, Hamidullah states opinions that form thesis topics that are not mentioned in the Qur'ān and *sunnah* in order to present the information or prove his statement. For instance, on a larger scale, he states that Muslims formulated international law and that the Constitution of

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<sup>9</sup> See Muhammad Hamidullah, "The Name of the Pharaoh Who Died By Drowning," *Islam and the Modern Age*, 3<sup>rd</sup> ser. 12 (1981).

Madinah was not only a constitution but the first written constitution in the world. On a smaller scale, Hamidullah forms interpretations based on primary sources in many cases. For instance, Hamidullah claims the Quraysh initiated the Battle of Badr. He states that the Battle of Badr occurred because the Muslims of Makka were forced out of their homes and thereafter were tormented with religious persecution. As a result, a Qur'anic verse was revealed to allow the Muslims to fight when persecuted (21:39-40). As the persecution by the pagan Arabs continued such as exerting economic pressure on the converts of Makka by confiscating the property of emigrants who left the city, and imposing political pressure on Abyssinia and Madinah, the two places where the Muslim refugees fled to escape persecution, several repercussions occurred by the Muslims. The Muslims placed economic pressure on the non-Muslim Arabs by banning the passage of the Qurayshite caravans on their routes. The Quraysh were very adamant about this rebuttal and decided to engage in warfare with their Arab counterparts. Thus, according to Hamidullah, the Muslims did not initiate the war since the non-Muslims initiated the provocation. This is expressed in the following quote:

The attacks on Qurayshite caravans should not be considered as simple pillage. Neither were the Qurayshite innocent nor the attackers private bands; a state of war was existing between two City States, and the right of belligerence includes damage to life, property and other interests of the enemy. It is for this reason that I do not agree with those timid apologetics who try to find arguments for denying outright the very existence of the expeditions sent to harass and loot the Qurayshite caravans.<sup>10</sup>

Therefore, Hamidullah confidently takes the position that the Battle of Badr was not initiated by the Muslims based on early sources such as Ṭabarī, Ibn Hishām, Ibn

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<sup>10</sup> Hamidullah, *The Battlefields of the Prophet Muhammad*, 28.

Hanbal's *Musnad*, and Ibn Ḥabīb's *Muḥabbar*.<sup>11</sup> Another interesting example of Hamidullah's use of early sources while simultaneously expressing his own opinion is related to the outcome of the Battle of Uhud. Hamidullah states that because of the various lands gained following the Battle of Badr, such as the overland route to Syria and Egypt, the Quraysh engaged in war with Muslims. As a result of the Battle of Uhud, the Muslims were able to regain their former position: "The enemy was four times as numerous as the Muslims, and did cause some harm to them, but nothing decisive happened. After a single encounter, the enemy retired and returned to Makka. The trade artery remained closed."<sup>12</sup> Therefore the Quraysh were not victorious in the Battle of Uhud, an opinion based again on primary sources such as Ibn Hishām, Maqrīzī, Baladhurī, and as-Sarakhsī.

It is important to note that other writings that also use primary sources contradict these analyses. For instance, Montgomery Watt claims that the Madinan Muslims initiated the Battle of Badr and Ira Lapidus argues that the Quraysh were the victorious party in the Battle of Uhud; both interpretations are based on primary sources.<sup>13</sup> Martin Ling adopts a more subtle approach on the two occurrences. In the case of who initiated the Battle of Badr, Ling merely quotes the Qur'ānic verse proclaiming that permission to fight is given to those who have been persecuted and wronged.<sup>14</sup> In the case of the outcome of the Battle of Uhud, Ling discusses the effects of the battle in several chapters concluding "the Muslims derived strength from Uhud

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<sup>11</sup> Ibid. 28.

<sup>12</sup> Muhammad Hamidullah, *Muhammad Rasulallah* (Hyderabad: Publishers: Stockists, Habib, 1974), 70.

<sup>13</sup> William Montgomery Watt, *Muhammad at Medina* (Oxford: Cambridge University Press, 1956), 1-5; Ira Lapidus, *A History of Islamic Societies* (Cambridge: Cambridge University Press, 1988), 31-32.

<sup>14</sup> Martin Ling, *Muhammad* (Rochester: Inner Traditions International, 1983), 135.

rather than weaknesses.”<sup>15</sup> All of Ling’s claims are based on primary sources from the 9<sup>th</sup> and 10<sup>th</sup> centuries. From this analysis, Hamidullah clearly interprets his sources in the same way as many other renowned scholars. He uses his intellect, current research on the topic, and objective judgment in order to portray the views he deems correct.

A third and unique example wherein Hamidullah uses early sources to support his own viewpoint is the case of a woman taking the leadership role of a State. Hamidullah takes the example of Queen Sheba, a sovereign who retained her position as Queen after converting to Islam, related in the Qur’ān. He believes that this illustrates that a woman can be a leader of a State. Once again, certain sources would agree with several aspects of Hamidullah’s reasoning, such as Gamal Badawi’s *Gender Equity in Islam*.<sup>16</sup> While certain sources agree, however, they take a sterner approach to the matter, as exemplified by Anis Ahmad in *Women and Social Justice*. Both authors’ opinions are based on primary sources.<sup>17</sup> Last, certain contemporary Muslim jurists, such as Yusuf Al Qaradawi, outrightly state that a Muslim woman should not be allowed under any circumstances to be a leader of state according to the Shari’ah, since it may interfere with her other roles promulgated in the Qur’ān and *sunnah*. However, Al Qaradawi states she is allowed to hold any other leadership position that will not require constant full-time attention, such as a manager, dean, director, member of parliament or minister.<sup>18</sup> The preceding cases demonstrate how scholars may use the same primary sources but arrive at their own distinctive conclusions. Neither

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<sup>15</sup> Ibid., 199.

<sup>16</sup> Gamal Badawi, *Gender Equity in Islam* (Plainfield: American Trust Publications: 1995), 37-41.

<sup>17</sup> Anis Ahmad, *Women and Social Justice: An Islamic Paradigm* (Islamabad: Institute of Islamic Studies; Leicester: The Islamic Foundation, 1996), 114-120.

<sup>18</sup> Yusuf Al Qaradawi, *The Status of Women in Islam* (Cairo: Islamic Home Publishing and Distribution, 1997), 20.

Hamidullah nor the other authors have disagreed with the primary sources. Rather, each expands his view based on primary source evidence.

In certain cases where the sources seem to discriminate against a group of people or to be incorrect, Hamidullah offers explanations for them. For instance, in *The Muslim Conduct of State*, Hamidullah states that assassination is allowed during the time of war, according to primary sources such as Ṭabarī, Sarakhsī, Ibn Sa‘d and Ibn Hishām.<sup>19</sup> Hamidullah states this is because the result is less bloodshed: “It is allowed in Muslim law, and may perhaps be justified on the ground that often it diminishes greater bloodshed and discord, and it is resorted to as the lesser of two evils. In the life of the Prophet there are several clear examples of it.”<sup>20</sup> Second, in a question and answer session recorded in one of the lectures compiled in *The Emergence of Islam*, someone asked about the reasoning behind the requirement that two female witnesses be considered equivalent to one male witness for financial matters, as stated in the Qur’ān. Hamidullah replies that many times the court case environment may involve a majority of men or an uncomfortable situation for a single woman, so the Qur’ān requires that two women should go together to testify, to protect each other’s honour. He definitely does not believe that the Qur’ān is stating that two women’s testimonies are equal to one man’s testimony:

In a Muslim society, therefore, the opportunity provided to women to meet men is less than the facility to meet members of their own sex. It was inevitable, therefore, to call for the evidence of two women in order to ascertain the facts of a case. This is in no way derogatory to women but is aimed at providing a facility to the fair sex in consideration of their own essential assignment. Otherwise, it was

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<sup>19</sup> Hamidullah, *The Muslim Conduct of State*, 227.

<sup>20</sup> *Ibid.*, 226 – 227.

quite possible to lay down that woman's evidence is not acceptable at all.<sup>21</sup>

Thus, Hamidullah attempts to provide positive or favourable explanations for rulings or requirements that appear to be unjust or discriminatory.

If Hamidullah locates research that opposes his thesis, he does not hesitate to state the issue and endeavours to provide logical reasoning behind his stance if possible. One such situation involves the *isnād* of the Sahifah of Hammam that was analyzed in Chapter Two. Through vigorous research, Hamidullah discovers a missing link in the *isnād* that extends back over 570 years. This missing link exists between two individuals, namely Muhammad ibn Ishaq ibn Mindah and Muhammad ibn al-Husain al-Qattan. Hamidullah discovers that Al-Qattan died in approximately the year 310 H / 922 AC, eight years before Ibn Mindah's birth in 302H / 914AC. Therefore, they could not have possibly transmitted the information to each other. Hamidullah admits the missing link and explains the mishap in the following words:

It looks as if this was an error in copying and that a whole line had escaped the eye of the scribe; and the reason why the error was not detected must have been this, that in this line there was only one name, a single link in the chain of *Isnad*. Further this line and the line following accidentally began with similar words, and as a result one whole line was skipped over by the scribe.<sup>22</sup>

Hamidullah supports this hypothesis by stating that 'Abd al-Wahhab ibn Mindah received his education from his father and then transmitted the information to the Sahifah of Hammam. However, 'Abd al-Wahhab ibn Mindah's father is not mentioned in the *isnād*. Similarly, Muhammad ibn al-Husain al-Qattan taught the information to

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<sup>21</sup> Hamidullah, *The Emergence of Islam*, 75-76.

<sup>22</sup> *Ibid.*, 85.



his son who is also not listed in the *isnād*.<sup>23</sup> Therefore, the missing link between the two figures is Ibn Mindah's father and Al Qattan's son, who happens to be the same person, Imam Abu 'Abdullah Muhammad Ibn Ishaq. Hamidullah observes in the chain that it does state the words "father of Ishaq" or "Abu Ishaq" in front of Muhammad Ibn Ishaq Ibn Mindah, implying the missing link. This portrays how the error could have been simply a transcription mistake. The issue is further explored by Hamidullah who finds that the error was also discovered in the Damascus manuscript and the Berlin manuscript of the Sahifah. He asserts the error must have occurred in the manuscript that was prepared for 'Abd al-Wahhab ibn Mindah, joining both Al-Qattan's father and Al-Qattan as one entry, a logical explanation. To sum up his analysis, Hamidullah compares the Musnad of Ahmad ibn Hanbal, prepared 200 years before this error, and the manuscript of the Sahifah of Hammam. His results show that the content of each is exactly identical, the missing link having no effect on the matter. Hamidullah concludes the following:

While the Musnad of Ibn Hanbal proves that the traditionalists of the centuries that followed him did not fail in the least in honestly maintaining the correctness of the Sahifah of Hammam, the newly discovered MSS of the same Sahifah in their turn make it certain also that Ibn Hanbal had preserved the Sahifah of Hammam with all scruples that govern scholarly truth and integrity. He could not have dreamt that eleven and a half centuries after his death, there could be held an investigation into the truthfulness and integrity of his scholarly work. He has been found to be strictly accurate in respect of the Sahifah of Hammam and there is no reason in the world why he should have been fraudulent as far as the other parts of his Musnad are concerned.<sup>24</sup>

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<sup>23</sup> This is testified by a statement of as-Sam 'ani in his biographical dictionary *Kitab al-Ansab* (Hamidullah, 85).

<sup>24</sup> *Ibid.*, 86.

Hamidullah then adheres to his primary thesis statement, with a study illustrating how from 677 to 1953 A.C. there was not a single alteration in the work.<sup>25</sup> Therefore, we can observe a very scrupulous use of sources -- not necessarily to substantiate his point, but to prove what is deemed correct.

Another example of Hamidullah's precise usage of the primary sources relates to his recognition of the period of the Jāhiliyyah. He is not reluctant to agree with the primary sources that proclaim a well-established and culturally stable society was intact prior to Islam. For instance, Hamidullah states that prior to the Prophet's migration to Medina and the commencement of the revelation of legal verses, the customs of Makka that did not contradict the Qur'ānic injunctions and *sunnah* were institutionalized.<sup>26</sup> Therefore, Hamidullah infers that moral customs existed. Second, he confidently admits that Makka demonstrated order and a "tiny City-State" was established.<sup>27</sup> Its government was an oligarchy that controlled ten principal tribes; each tribe was responsible for one of the municipal factions. He labels this group The Council of Ten.<sup>28</sup> A specific function was assigned to each family and municipal faction. For example, Abu Bakr's family was assigned to take care of justice in cases of tort, 'Umar ibn al-Khaṭṭāb's family was in charge of the foreign relations department, Abū Sufyān's family was responsible for holding a flag in an independent war, Mus 'ab ibn 'Umar's family was in charge of holding the flag in a war along with allies, and the Prophet's family provided drinking water for the pilgrims.<sup>29</sup> In addition to these ten

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<sup>25</sup> Ibid., 87

<sup>26</sup> Ibid., 212-213.

<sup>27</sup> Hamidullah, *The Prophet's Establishing a State and His Succession*, 20.

<sup>28</sup> Ibid., 22.

<sup>29</sup> Ibid., 21.

responsibilities, four individuals were in charge of the following functions: an engineer to rebuild the temple of the Ka'bah, an astronomer-general for the "intercalculations" of the lunar calendar, someone to control the rites of pilgrimage at Arafat, and someone to control the rites of pilgrimage at Muzdalifah.<sup>30</sup> Hamidullah also conveys enormous respect and praise for the educational system in the period of Jāhiliyyah.<sup>31</sup> He elucidates his recognition by stating: "The Arabic language, at the dawn of Islam, was highly developed, in the richness of vocabulary, fixedness of grammatical rules and vastness of poetical literature of a high standard so much so that it is the diction of the Jāhiliyyah and not of the literary golden age of Islam which is considered as the classical and standard diction."<sup>32</sup> Muslims who incorporated customs and borrowed practices and knowledge from the non-Muslim Arabs after the period of Jāhiliyyah is also recognized. For instance, the Prophet allowed the non-Muslims to teach Muslims in the initial stages of Islam. When the Muslims held several prisoners of war after the Battle of Badr, those who could read were set free if they taught ten Muslims to read.<sup>33</sup> Last, Hamidullah admits that the Medinan Islamic State's government during the caliphate mirrored the Makkan Jāhiliyyah state: "I am tempted to suggest that the caliphate of the Rāshidūn was an amalgamation of monarchy and republic, election for life. This synthesis resembled the system of Arabian tribes, where selection of the chief was for life."<sup>34</sup> Therefore Hamidullah concludes that there was order and discipline in the period of Jāhiliyyah in Mecca, exposing and fully agreeing with the primary sources.

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<sup>30</sup> Ibid., 21.

<sup>31</sup> Ibid., 3-6.

<sup>32</sup> Muhammad Hamidullah, *Educational System in the Time of the Prophet* (Philadelphia, Education and Literacy For Muslims, 1994), 3.

<sup>33</sup> Hamidullah, *The Emergence of Islam*, 200.

<sup>34</sup> Hamidullah, *The Prophet's Establishing a State and His Succession*, 28.

The analysis thus far portrays that Hamidullah attempts to cautiously prove his statements with intensive research, data, and facts. He utilizes his sources in a scrupulous manner, stating their content regardless of whether they are against his theory or seem incorrect. He attempts to supply reasoning for his findings by using other primary sources to explain his point of view. His recognition and acknowledgement of the pre-Islamic period, as a time of growth that maintained many administrative benefits, further reveals his firm adherence to primary sources. Hamidullah's work demonstrates an accurate use and profound knowledge of his sources.

#### Style and Technique

If there is one area in which Hamidullah is original, it is in his style of writing. As discussed earlier, although Hamidullah has studied the works of Western authors, it is his style to refrain from providing names. When Hamidullah is confronted with a challenge, he accepts it, but he abstains from replying in a vindictive and argumentative fashion. His reply is objective, impersonal, and anonymous. For example, in Hamidullah's initial discussion concerning the Constitution of Medina, writers tried to refute him. In his next publication of the booklet, he simply stated how certain writers have disputed his claims. He does not state or recall their arguments nor does he provide the writers' names, however, he resumes the discussion with additional information. This can be observed in his foreword to the Second Edition of *The First Written Constitution in the World*. Hamidullah states: "There are reasons besides these

to publish, or rather republish, this humble work. I take the opportunity of replying to a possible objection on the part of readers who may think that the document emanating from the Prophet of Islam, even though important, cannot be the first of its kind in the world.”<sup>35</sup> Another example can be observed in the foreword of the first English Edition of *Sahifah Hammam Ibn Munabbih*. Hamidullah states: “Incidentally it dispels many a misapprehension caused by the writings of Western pioneers in the field to whom were not accessible to many works that have since been discovered.”<sup>36</sup> This illustrates that one of the main reasons Hamidullah writes or re-writes certain books is to reassert his position to those who have made claims against it.

However, when it seems absolutely crucial, he will state the source and incident.

The following excerpt from the *Sahifah Hammam ibn Muanabbih* portrays this point:

We began our humble research by referring to Brockelmann, and we were sorry to find that he has committed many errors of oversight. He has not mentioned this Sahifah under the name of Hammam ibn Muhabbih, in spite of the fact that the MS was preserved in Berlin, and bore on the very first page, on the title: “Sahifah Hammam ibn Munabbih.” We made a long research, and luckily though by mere chance found that he has ascribed this Sahifah to ‘Abd al-Wahhab ibn Muhammad ibn Ishaq ibn Mindah (d.473 H./1082), and added: “Among his works is the Sahifah of Hammam ibn Mindah (sic), who died in 151 H./748 (sic) which has been transmitted from Abu Hurairah, who died in 58H./677.”

This error is found not only in the first edition of his GAL [German History of Arabic Literature], but recurs in the Supplement and again in the revised edition of the 1st volume. He writes “Hammam ibn Mindah,” even though the name is Hammam ibn Munabbih. In the same manner, he has erred on the date of the death. The correct date is 101H, and not 151. (One could understand if he had given the date 131, as we have mentioned above, cf 89 and note.) In ascribing this work to ‘Abd al-Wahhab ibn Mindah, he has committed a greater blunder. ‘Abd al-Wahhab was at one time

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<sup>35</sup> Hamidullah, *The First Written Constitution in the World*, 5.

<sup>36</sup> Hamidullah, foreword, *Sahifah Hammam ibn Munabbih*.

merely a transmitter, an accredited teacher of this Sahifah, and never its author.<sup>37</sup>

This example illustrates that Hamidullah recognizes the various writings of Western scholars in the field. However, he does not desire to be caught up in polemical discussions, but would rather simply state the facts as they appear in the primary sources. He does not suppress what mainstream Islam declares for the sake of literary critiques or modern trends.

Another interesting aspect of Hamidullah's style is that he produces several editions of his works, partly because he discovered more advanced information, partly in order to reorient the content to improve its effectiveness, and, in some instances, in order to modify or correct newly discovered inconsistencies in his material. He is aware that it is awkward to publish several editions: "All praise is to God Almighty. The seventh edition in the lifetime of the author is something not very common...."<sup>38</sup> In fact, he does not hesitate to state the reason for producing many editions: "It is perhaps an irony of fate that the present work [*The Muslim Conduct of State*], prepared and printed by the author first in a Muslim country, had to be revised for five more re-editions in a non-Muslim environment. The book is esteemed more by non-Muslims as by Muslims, if my impression is correct."<sup>39</sup>

In certain cases Hamidullah's works portray vagueness. For instance, in *The Prophet's Establishing a State and His Succession*, he mentions the various components of an Islamic State in the section entitled, "Conception of State of Islam," but the

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<sup>37</sup> Ibid., 89-90.

<sup>38</sup> Hamidullah, *The Muslim Conduct of State*, iii.

<sup>39</sup> Ibid., iv.

correlation between this chapter and the previous chapter on the “Qur’ānic Conception of the State,” is unclear. It is reasonable to question what the differences between the two chapters would be since the Qur’ānic conception of the state should parallel the Islamic conception of the state. A close reading reveals that the “Conception of State in Islam” further elaborates on the Prophet’s efforts to establish a state during his time. Another example exemplifying confusion is observed in the same book is his use of the terms “city-state” and “state.” Under the sub-title “Islamic State,” the word state is used several times in the form of State, Madinan State, Muslim State, Islamic State and State in a State, which all connote basically the same definition; still his use of these words is somewhat confusing. On some occasions, Hamidullah calls the same Islamic State a city-state that displays some degree of inconsistency. In addition, in one instance he proclaims that Makka did not have a state or any type of a state administratively, but thereafter he proclaims that, “This ‘Muslim State’ had foreign relations also, concurrently, of course, with the non-Muslim Makkan State.”<sup>40</sup> These uses may cause much confusion for the reader and make it difficult to perform a proper analysis of the issue on a first reading. In this case, I have assumed that a city-state was first established in Medina, soon evolving into a state as the city-state became larger. This is a reasonable assumption since the entire discussion is under the title “Islamic State.”<sup>41</sup> Also, in relation to the state in Mecca, he seems to be implying that a state came into existence in Makka after the establishment of the Madinan State, but not prior to it. B. Aisha Lemu comments on this confusion and dilemma in her book review

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<sup>40</sup> Hamidullah, 22.

<sup>41</sup> Ibid., 22.

on Hamidullah's *Islam – A General Picture*. "To conclude, it seems a pity that so erudite and widely read a scholar should have produced a book apparently in such haste that its defects and errors were not noticed and corrected before publication. It is hoped that the publisher will take note of some of the points raised here for its next edition...."<sup>42</sup> Thus grammatical mistakes are present in some of Hamidullah's works in the English language. Similar flaws seem to be absent from his works in other languages as observed from other commentaries. For instance, we have found that he is more proficient in French, having lived in France for over 40 years. This can be illustrated by a book review written on Hamidullah's *Six Originaux Des Lettres Diplomatiques Du Prophete De L'Islam* by T. B. Irving: "The volume is properly annotated and indexed, and contains good illustrations; the documents themselves are given in photocopy. The work is exhaustive and will benefit both students and specialists. I congratulate Professor Hamidullah for a job well done."<sup>43</sup> Therefore, a large portion of Hamidullah's mistakes fall on the publisher's shoulders, according to Lemu.

Thus Hamidullah's English works sometimes suffer from ambiguity. However, his vocabulary is extremely advanced and appropriate in a wide field of subjects, ranging from legal terminology when dealing with the law, political terminology when dealing with the state, military terminology when dealing with war, to theological terminology when dealing with mysticism and spirituality and many, many other spheres. In his unique style of writing he interjects his own personal remarks throughout his literature.

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<sup>42</sup> B Aisha Lemu, *The Muslim World Book Review* 2 (1981): 10.

<sup>43</sup> T. B. Irving, "Six Originaux Des Lettres Diplomatiques Du Prophete De L'Islam," *Muslim World Book Review* 7 (1986): 15.



He also provides many elaborate analogies while both writing and speaking. His organization of the material is methodical, as he numbers each paragraph, a style unique only to him. The reason he has chosen this method may be to illustrate the importance of each paragraph rather than each page or chapter.

### The Methodological Approach

Applying the scientific method is the most resourceful, competent, and dependable approach to studying social phenomena.<sup>44</sup> It enables the researcher to draw conclusions with factual evidence, not just theoretical or plausible ideas. The components of the scientific method include the formulation of a problem, followed by an induction of hypotheses and a deduction of observations, from which conclusions can be drawn, proving or disproving the primary hypotheses. There are four principal methods of applying the scientific method: historical research, descriptive research, correlational research, and causal-comparative and experimental research.<sup>45</sup> Research portrays that Hamidullah's applies the scientific method through historical research and correlational research.

Historical research involves analyzing and comprehending past events in order to draw conclusions that may assist in explaining present events and predicting future events. This task is accomplished by proving hypotheses using primary sources if

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<sup>44</sup> L. R. Gay, *Educational Research*, 2<sup>nd</sup> ed. (Columbus, Charles E. Merrill Publishing Co., 1976), 5.

<sup>45</sup> *Ibid.*, 11-17.

available and secondary sources if primary sources are unavailable.<sup>46</sup> Hamidullah constantly uses primary sources in his works and fully footnotes them in order to prove his findings. His method of choosing these sources has already been discussed. Correlational research attempts to determine whether, and to what degree, a relationship exists between two or more quantifiable variables in order to establish a relationship or to use relationships in hypothesizing predictions. Throughout Hamidullah's works, as observed earlier, comparisons are made with ancient civilizations in order to prove his findings and to demonstrate contributions Muslims have made in the field of law. Hamidullah also makes comparisons with other religions and renowned individuals who have contributed to the field in order to prove his claims. For instance, in the case of determining the originators of international law, Hamidullah compares the contributions from Islamic and Christian sources. His arguments tend to nullify the claim that Christianity was the originator since: 1) Christianity's teaching of love contradicted the stipulations of modern international law;<sup>47</sup> 2) Christianity lacked morality at the time when modern international law was forming into theories;<sup>48</sup> and 3) international law was formulated in 1856 but in 1889 Christianity was still dealing with their mutual relations.<sup>49</sup> In terms of making comparisons among renowned individuals in the field, Hamidullah cites key Europeans who were the first to address the subject of international law, for example, Pierre Bello, Ayala, Vitoria, and Gentiles from Spain and Italy. Hamidullah explains that they were all products of the Renaissance stimulated by

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<sup>46</sup> Ibid., 11-12.

<sup>47</sup> Matthew (verse 39), Matthew 22:21, Matthew 26: 52, St John 18: 36 (Hamidullah, 68).

<sup>48</sup> Ibid., 68.

<sup>49</sup> According to Papal Bull (Hamidullah, 69).

the impact of Islam on Christendom.<sup>50</sup> Therefore, Hamidullah concludes that the Muslims were the founders of international law and the credit belongs to them, and not to any other civilization, empire, or nation. Thus Hamidullah engages in the correlational methodology in order to prove the legitimacy of his claims. Hamidullah explains the method of his study as follows:

There are two methods to deal with our subject: firstly to treat it as a dead body, and experts as well as amateurs indulge in anatomical operations and dissections, - and that is the fate of our subject generally in the West, where greater importance is attached to discover how the early Muslim international lawyers plagiarized things European, although these same enthusiasts pass into silence the reverse case in later times regarding Middle Ages and Renaissance; the second method is to treat the subject as a living organism, and the description should be confined to a correct representation only. I have tried to do that to the best of my humble capacities .... My readers will see that I have not hidden the viewpoint of orthodoxy. I am not writing on what, according to modern average Muslim, ought to be the Muslim law, but what has always been considered to be the Muslim law.<sup>51</sup>

This demonstrates that Hamidullah desires to address his audience in a frank and honest manner. This attitude can be further observed throughout his publications. His writings suggest that he simply wishes to portray the truth. In the foreword of *The Muslim Conduct of State* he states:

With the loss of their empires, average Muslims have forgotten their rich cultural heritage. Over a decade ago, when I began writing these pages, I had not the slightest idea that to write on Muslim international law meant describing the very first phase of the science after it became a self-contained and independent branch of learning. Nor was I aware at that time any modern work existed on the subject or was even under preparation.

At the instance of the League of Nations and with the warm support of the Head of the Law Faculty of the Osmania University, Public International Law was introduced in the Osmania LL.B.

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<sup>50</sup> Ibid., 70.

<sup>51</sup> Hamidullah, *The Muslim Conduct of State*, vi-vii.

curriculum as a compulsory subject, and I happened to be the first batch of students after this decision. It struck me at once that what was taught us as international law was identical in many aspects with the teachings of the books of Fiqh and Muslim history. When I talked this over with over learned Professor and Head of Faculty, Husain ‘Ali Mirzā, he encouraged me in the idea of writing an article, perhaps to be read in the Law Students’ Union.

The bulk of the article, however, daily increased, and in the following year I was permitted to take the same theme for subject as a post-MA research scholar ....<sup>52</sup>

This quote portrays that Hamidullah had no intention whatsoever to retaliate in a vindictive way or to remove the misconceptions that other historians had placed on Muslims. He discovered his thesis statement for his Ph.D. dissertation by accident. The chronology of his books could provide an understanding of the development of his perspective. *The Muslim Conduct of State* was the first book he wrote of the five books mentioned. Furthermore, the amount of text preceding his thesis statement is the greatest in *The Muslim Conduct of State*. This was the general format of much of Hamidullah’s writings and statements and once again, it was not intended to serve as a rebuttal of any sort to other historians. In *The Prophet’s Establishing a State and His Succession*, he states: “There is a renaissance of science among contemporary Muslims. It is time perhaps that we study anew how the Holy Prophet founded a State, how he governed it and how its continuity, through succession, was assured. In collecting here my humble studies, on certain aspects only of the problem, my only ambition is to focus attention of scholars to some new interpretations of old and well-known facts.”<sup>53</sup>

Therefore, in this case he merely wishes to remind historians of certain facts; he is not stating his thesis in a vindictive way. Actually, he apologizes for his effort in case he

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<sup>52</sup> Ibid., viii.

<sup>53</sup> Hamidullah, preface, *The Prophet’s Establishing a State and His Succession*.

may offend anyone, another interesting characteristic.<sup>54</sup> In the Foreword of the first edition of *The First Written Constitution of the World*, there is no mention of whom the book is written for or its objectives.

After analyzing his intentions behind writing *The First Written Constitution in the World*, we can hypothesize that it was written merely to educate and inform people. The Foreword to his second edition confirms this hypothesis. Hamidullah commences his Foreword by stating: “It is a proud heritage of the Muslims that the first written-constitution of a State promulgated in the world by a head of the State originates from no less a personality than the Holy Prophet himself. The new generation ought to know that. Such is the first and foremost reason prompting me to prepare this study.”<sup>55</sup> Hamidullah is not only attempting to educate the West about Islam, but also Muslims from both the West and the East. Thus his premise is to educate, to inform, and to remind historians, researchers and laymen alike, of what he deems as the truth, as seen in many of his introductions. It is therefore apparent that Hamidullah has a distinctive yet sound procedure of scholarly research. His method can be identified as scientific in the sense of having a well-conceived plan executed logically and coherently for the purpose of discovering the truth.

Hamidullah’s writings are mainly scholarly books in which he attempts to follow Western academic standards. However, reducing Hamidullah’s works to this category does not necessarily mean that his application of either the academic standards or artistic techniques is the same in every book. Strictly speaking, his application of

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<sup>54</sup> Ibid., preface.

<sup>55</sup> Hamidullah, *The Muslim Conduct of State*, 4.

academic standards varies among his books. Classifying Hamidullah's works as scholarly is simply based on the dominant technical feature of the works. Of the five books in this study, *The Muslim Conduct of State* is the most scholarly in terms of in-depth research and language, probably because it was his Ph.D. dissertation. *Sahifah Hammam ibn Munabbih* mirrors the standard put forth in *The Muslim Conduct of State*, although the language and style are simpler and intended for the general audience with any level of *ḥadīth* comprehension. Similarly, *The First Constitution of Islam* mirrors *Sahifah Hammam ibn Munabbih* in that extensive research is presented but the language is easy to understand, avoiding pedantry at all costs. *The First Constitution in Islam* is considered as a book by Hamidullah, but it can be regarded as a booklet or an article. The last book written by Hamidullah under analysis is *The Prophet's Establishing a State and His Succession*. In several places the information seems to be unclear or imprecise, although the content is informative and often remarkable. While the information is sometimes unclear in *The Prophet's Establishing a State and His Succession*, another book, *The Emergence of Islam* supplements it and explains the information adequately. *The Emergence of Islam* is a series of lectures delivered in Urdu, translated into English, and bound in a book. It parallels the style and research of *The Muslim Conduct of State*, even though it was conveyed in a language other than English.

Hamidullah adheres to the scientific methodology, but as his choice and utilization of sources, style of writing, and technique formidably suggest, his method and approach is unique. Although his evidence is based on factual information, and he extensively as well as rigorously researches multitudes of both primary and secondary

sources, he refrains from delving into deep polemical discussions, criticizing or down-playing other historians.

### The Ideological Perception

The concept of ideology is not simple to grasp since it can convey a variety of meanings. Ideology can be understood as simply an attitude that does not recognize its dependence on social reality, a social-structure with a designated plan for its application, or last, a political power.<sup>56</sup> Grasping one's ideology and understanding how one formulates it are challenging areas of research.

As the youngest child growing up in a Muslim family, Hamidullah experienced both the negative and positive aspects of family life. This facilitated the development of decision-making styles and an understanding of family relations. The atmosphere was conducive to learning because his family was highly motivated towards educational pursuits. During his youth, his homeland experienced socio-economic and political stability and progress in most aspects of society, especially education. His life was not without challenges. Upon completing his first degree in Hyderabad, his mother passed away and when he finished his final degree in Paris, his father passed away. Neither incident blunted his motivation to complete his education and pursue his future career. He seems to possess a firm faith-commitment that helped him follow his career ambitions.

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<sup>56</sup> Slavoj Zizek, *Mapping Ideology* (New York; London: Verso, 1994), 3-4.

Hamidullah was a young man when the Ottoman Empire existed with a Caliph functioning as the central authority for all Muslims worldwide. He witnessed the final stages of the Ottoman Empire's disintegration. His experiences inevitably helped him formulate his perspectives on the Islamic movement. As a young man he was also confronted with several tumultuous political episodes. In his homeland he was enveloped by Operation Polo or the invasion of Hyderabad by India, in Germany he witnessed part of the Nazi's regime of destruction, and eventually he lived through World War II. Experiencing global conflicts must have contributed extensively to his understanding of the reasons for war, as well as its politics and consequences. Research suggests that he would prefer political solutions to conflicts, in order to achieve peace and harmony and to preserve human life. His experiences may have motivated him to find utopian solutions to humanity's problems or at least they produced a desire to find legitimate solutions.

I have hypothesized that Hamidullah's formation of his worldview is rooted in early Muslim history. Clearly, Hamidullah's ideological perception is governed by the Absolute Reference Frame or complete adherence to the Qur'ān and the *sunnah*.<sup>57</sup> This is apparent through the sources he uses, the concepts he discusses, the frequency with which he raises certain issues, and the opinions he expresses on these issues. For instance, when supporting his claims concerning Islamic constitutional law, his emphasis and references are heavily extracted from Qur'ānic injunctions and precedents set during the time-period of the Prophet, as elaborated in preceding chapters. In addition to Hamidullah's emphasis on Islamic constitutional law, he writes profusely on

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<sup>57</sup> Refer to segment entitled "The Indispensable Foundation of Law and Polity" in Chapter Two.



issues pertaining to the authenticity, remarkability, and practicality of the Qur'ān; he simultaneously emphasizes the period of the Prophet throughout his other books and articles.<sup>58</sup> This demonstrates Hamidullah's desire to focus on these areas in order to illustrate their relevance and vitality in modern times. He has chosen to write in a strictly scientific manner, leaving readers to draw their own conclusions. This is further exemplified in his article entitled, "The Cultivation for a Spiritual Life," wherein he

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<sup>58</sup> Muhammad Hamidullah, "Administration of Justice in Early Islam," *Islamic Culture* 11 (1937): 162-171; Muhammad Hamidullah, "African (Black) Muslims in the Time of the Prophet," *Al-'Ilm* 4 (1984): 11-19; Muhammad Hamidullah, "The Ahabish Tribes, Allies of the Pagans of Mecca," *Hamdarad Islamicus* 2<sup>nd</sup> ser. 9 (1986): 3-9; Muhammad Hamidullah, "Budgeting and Taxation in the Time of the Holy Prophet," *Journal of the Pakistan Historical Society* 3 (1955): 1-11; Muhammad Hamidullah, "The Christian Monk Abu 'Amir of Medina of The Time of the Holy Prophet," *Journal of the Pakistan Historical Society* 7 (1959): 231-240; Muhammad Hamidullah, "The City-State of Mecca," *Islamic Culture* 12 (1938): 255-276; Muhammad Hamidullah, "The Concordance of Hijrah and Christian Eras For the Lifetimes of the Prophet," *Journal of the Pakistan Historical Society* 16 (1968): 213-219; Muhammad Hamidullah, "Constitutional Problems in Early Islam," *Islam Tetkikleri Enst. Degrisi* 5(1973): 15-35; Muhammad Hamidullah, "Educational System in the Time of the Prophet," *Islamic Culture* 13 (1939): 48-59; Muhammad Hamidullah, "The Episode of the Project of a Written Testament by the Prophet on His Death-Bed," *Journal Of the Pakistan Historical Society* 31 (1983): 227-242; Muhammad Hamidullah, "History of the Qur'an," *Majallat al-Azhar* 9<sup>th</sup> ser. 42(1970): 6-12; Muhammad Hamidullah, "Intercalation in the Qur'an and the Hadith," *Islamic Culture* 17 (1945): 327-330; Muhammad Hamidullah, "Islam's Solution of the Basic Economic Problems. The Position of Labour," *Islamic Culture* 10 (1936): 213-233; Muhammad Hamidullah, "Islamic Notion of Conflict of Laws," *Proceedings of the First All-India Law Conference* (1945): 113-128; Muhammad Hamidullah, "The Jewish Background of the Battles of Jamal and Siffin," *Journal of the Pakistan Historical Society* 38 (1982): 235-251; Muhammad Hamidullah, "A Letter of the Prophet in the Musnad-Script Addressed to the Yeminite Chieftains," *Hamdarad Islamic* 3<sup>rd</sup> ser. 5 (1982): 3-20; Muhammad Hamidullah, "Life of the Holy Prophet: New Light on Some Old Problems," *Islamic Order* 2<sup>nd</sup> ser. 1 (1979): 84-94; Muhammad Hamidullah, "The Map of Battle of Malazgird on Basis of Historical Description of the Battle," *Islamic Culture* 19 (1945): 352-353; Muhammad Hamidullah, "The Messenger of God," *UNESCO Courier* 8<sup>th</sup> ser. 34 (1981): 6-10; Muhammad Hamidullah, "Muhammad Ibn Ishaq (the Biographer of the Holy Prophet)," *Journal of the Pakistan Historical Society* 15 (1967): 77-100; Muhammad Hamidullah, "Muhammad, Prophet of God," *Cultures*, 4<sup>th</sup> ser. 7 (1980): 25-38; Muhammad Hamidullah, "The Nasi', the Hijra Calendar and the Need of a New Concordance for the Hijra and Gregorian Eras," *Proceedings of the 27<sup>th</sup> International Congress of Orientalists* (1971): 267-268; Muhammad Hamidullah, "Place of Islam in the History of Modern International Law," *Hyderabad Acadmey Studies* 2 (1940): 29-34; Muhammad Hamidullah, "The Prophet of Islam: His Biography," *Majallat al-Azhar* 41 (1969): 11-16; Muhammad Hamidullah, "Some Arabic Inscriptions of Medinah of the Early Years of Hijrah," *Islamic Culture* 13 (1939): 427-439; Muhammad Hamidullah, "Tolerance in the Prophet's Deeds at Medina," *UNESCO Press* (1981); Muhammad Hamidullah, "Two Christians of Pre-Islamic Mecca 'Uthman ibn al-Huwairith and Waraqah ibn Naufal," *Journal of the Pakistan Historical Society* 6 (1958): 97-103.

never states his opinion of adhering to spirituality; he simply states either “Islam propagates” or “the Qur’ān emphasizes” such and such.<sup>59</sup>

His style of adhering to the Absolute Reference Frame (ARF) in an objective manner is in itself unique and important for understanding his ideology. In addition, he often illustrates or models the ARF, which calls for applying the Qur’ān and *sunnah* in their ideal form. While the ARF facilitates modernism, it simultaneously prohibits innovation or deviation, *bid’a*, from the norm. The ARF, understood by some historians as traditionalism, is actually the foundation of modernization and consequently a key source of revivalism in Islamic thought.<sup>60</sup> For example, a renowned Islamic theologian, Ahmad Ibn Taymiyyah (d.738 A.H. / 1328 AC), who disagreed with the ancestral approach or *salaf* philosophy, called for *idjtihād*, which allows relevant modifications and simultaneously upholds the stipulations of the primary sources.<sup>61</sup> An example of a present day researcher who actually worked with Hamidullah is Syed Abul A’la Maududi (d. 1399 A.H. / 1979 A.C.), an activist and revivalist who also upholds the primary sources.<sup>62</sup> The difference between the traditionalists and the modernists is that the former do not replace the *ḥadīth* or the *sunnah* by pure reason, ‘*aql*, whereas the latter do, as further emphasized by George Maksidi: “The basis of conflict between the ‘traditionalists’ and the ‘modernists’ is theological.”<sup>63</sup>

<sup>59</sup> Muhammad Hamidullah, “The Cultivation of Spiritual Life,” *Majallatu’l Azhar* (1971): 5- 13.

<sup>60</sup> ‘AbdulḤamīd A. AbūSulaymān, *The Crisis of the Muslim Mind* (Herndon: International Institute of Islamic Thought, 1993), 35-63.

<sup>61</sup> Majid Fakhry, *A History of Islamic Philosophy* (New York; London: Columbia University Press, 1970), 350-354.

<sup>62</sup> Ashfaq Mirza, Preface, *Fundamentals of Islam*, by Maulana Abul A’la Maududi, 5<sup>th</sup> ed. (Lahore: Islamic Publications Limited, 1980) iii-iv; Kurshid Ahmad, Preface, *Towards Understanding Islam*, by Maulana Abul A’la Maududi (Lahore: International Islamic Foundation of Student Organization, 1970): 9-10.

<sup>63</sup> George Maksidi, “Remarks on Traditionalism in Islamic Religious History,” *The Conflict of Traditionalism and Modernism in Muslim Middle East* ed. Carl Ledien (Austin: University of Texas,

Returning to our primary discussion, while Hamidullah indirectly calls for the correct understanding of the Absolute Reference Frame approach and the Islamization of knowledge, he simultaneously exemplifies this ideology through his scholarly and political efforts towards the reconstruction and establishment of the Islamic paradigm. In terms of his scholarly achievements, we have observed his numerous books and articles, his numerous languages known and expressed in his works, the various subject areas he has discussed and dissected. All of these illustrate his drive to convey his message for revivalism and adherence to the primary sources of Islam throughout both Western and Eastern academic fields. We have discussed Hamidullah's political endeavours and achievements, as well as his analysis of *idjtihād* with a call for its universal implementation. His article, "The Notion of Khilafat and its Modern Application," further argues for the urgent establishment of the Absolute Reference Frame approach of Islam in modern times.<sup>64</sup> Importantly, Hamidullah does not call for the fossilization of the future of Muslims and non-Muslims under Muslim rulership by implementing ARF. To the contrary, he calls for a comprehensive understanding of the Absolute Reference Frame through a scholarly and professional approach.

He also frequently calls for the unification of the various sects and schools of thought in Islam. In terms of the various Islamic sects, Hamidullah illustrates how they maintain the same foundation, as observed in his discussion on the pioneers who toiled in the field of *Uṣūl al-Fiqh*. Hamidullah illustrates the connection between the jurists during this period and the companions who were in turn connected to the Prophet. For

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1966): 78.

<sup>64</sup> See Muhammad Hamidullah, "The Notion of Khilafat and Its Modern Application," *Journal of the Pakistan Historical Society* 4 (1956): 278-284.

instance, one of the companions, ‘Abdullah ibn Mas’ūd, had a pupil from the fourth generation, Abū Ḥanīfah, establisher of the Ḥanīfi school of jurisprudence. Another companion was ‘Abdullah ibn ‘Umar, whose pupil’s pupil was Mālīk, establisher of the Mālīki School of jurisprudence. A third companion was ‘Abdullah ibn ‘Abbas, some of whose legal opinions were adopted by the Khawarij. A fourth companion was ‘Alī ibn Abī Ṭālib, whose works have reached Islamic jurisprudence through Sayd ibn ‘Alī and the Ithnā‘ashariyyah and Fāṭimi imams. Later followed the pupils of pupils, such as al-Shafi‘ī, who was the pupil of Muḥammad ibn al-Ḥasan, who was the pupil of Abū Ḥanīfah and Mālīk. Among the students of Al-Shafi‘ī, there was Ahmad ibn Ḥanbal, and his student Dawud ibn Khalaf al-Zāhiri, the founder of the Zāhiri school.

Consequently, Hamidullah emphasizes that there is no fundamental difference among Muslims of different theological persuasions as far as matters of law are concerned. In addition, he demonstrates how they have learned from each other, leading them to share similar legal opinions. He attempts to show how movements and groups originated from the Prophet’s time, specifically by his own companions, yet maintaining the same foundation. Hamidullah also illustrates his call for the unification of Shī‘ahs and Sunnīs, as evidenced by a remark he makes in one of his 1980 Bahawalpur lectures:

Some sixty-five or sixty-seven years ago when I was a student in a primary school, our Headmaster came into our class and started asking the name of every student.... Among them were Shī‘ahs as well as Sunnīs. At that time he came out with remarks which has left an indelible impression upon my mind. I have never been able to forget it. He said: “Children! Never quarrel over this issue. Shī‘ahs and Sunnīs are brothers. Both are Muslims. The difference between them is owing to a good reason ....<sup>65</sup>

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<sup>65</sup> Hamidullah, *The Emergence of Islam*, 29-30.

This stance is interestingly observed throughout Hamidullah's works. In his discussion of international law, Hamidullah does not differentiate between the various schools of thought, since he stresses that they all originate from the same source, *Ahl al-Qiblah*. He wished to write on the entire dictum of international law without using a comparative approach.<sup>66</sup> This illustrates his view of striving to find unification once again. In view of these examples, Hamidullah clearly calls for a universal application of Islam and the unification of all peoples.

Hamidullah's philosophy is not that of an extremist but of a moderate, not a fundamentalist view but a universalist one. He does not promote the anathematization of Western civilization, but instead advocates the incorporation and affiliation of all compatible and relevant aspects into the Absolute Reference Frame approach and revivalist movement. The choices must be consciously tested, verified, and then instituted.

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<sup>66</sup> Hamidullah, *The Muslim Conduct of State*, vi.

## CONCLUSION

The socio-political tranquility of Hyderabad-Deccan preceding Operation Polo in 1948 facilitated much educational and cultural advancement. This rapidly developing environment provided Hamidullah with the ideal opportunity for educational growth, having earned five degrees related to the field of law by the age of 28 in 1936. He began writing at age 18, and thereafter he dedicated his life to literary pursuits. Since then he has written over 100 books and 900 articles. Along with one of his major areas of focus, Islamic constitutional law, he has written on a variety of other subject areas, ranging from Islamic theology to Islamic history, from Qur'ānic exegesis to Orientalism.<sup>1</sup>

His research is thorough, as he attempts to reach perfection by studying sources in their original language, whether it be Arabic, English, French, German, Italian, Persian, Russian, Turkish, or Urdu, by first learning the language. When necessary, he would travel to the research site in order to locate, study, and document his data. His methods and conclusions bear the stamp of objectivity. He made a conscious effort not to project his thoughts without valid data and facts. His method enables the reader to digest the research and arrive at his or her own conclusions from the data presented. It is important to distinguish the uniqueness of the subjects he selects to discuss, the thoroughness of his research that incorporates a variety of sources in different languages, and the style of his presentation that makes his scholarship original and in a class of its own.

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<sup>1</sup> See Appendix.

Hamidullah arduously searches for the recognition of Muslims' contributions, specifically in Islamic constitutional law, as observed in Chapters Two and Three. From the field of Jurisprudence to the development of the discipline and science of international law, to the promulgation of the first written constitution of the world or the formulation of a historical codification method, the *isnād*, in recording data—all of Hamidullah's contributions remain focused, distinctive, and useful for the fields of law and history. Although certain historians have overlooked these contributions, Hamidullah blames the Muslims themselves for this neglect. He believes that in order for the Muslims to achieve recognition, they must embrace intellectual revivalism. And in order for revivalism to occur, Muslims must begin with the implementation of Islam, working towards improving the field of Islamic literary scholarship, and subsequently, building the Muslim *ummah*. In addition, while forming a revivalist movement, Muslims must not forget the Qur'ān and the *sunnah*: "There is a renaissance of science among contemporary Muslims. It is time perhaps that we study anew how the Holy Prophet founded a State, how he governed it and how its continuity, through succession, was assured."<sup>2</sup> Islamic constitutional law is an essential area of focus since it links the pathways that are necessary for implementing an Islamic State in modern times and assisting in the initial stages of reviving and reforming the Muslims.

In Hamidullah's works on Islamic constitutional law, he offers solutions to assist in the application of Islam in contemporary times. This application involves the amalgamation of politics and religion, adhering to the correct understanding of the Absolute Reference Frame of Islam provided by the Qur'ān and the *sunnah*, and

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<sup>2</sup> Hamidullah, *The Prophet's Establishing a State and His Succession*, v.

applying *idjtihād* to allow Islamic law to inform and adapt with the times. His worldview for establishing peace and harmony incorporates the correct understanding of Islam, which means to fully understand and apply its primary sources, the Qur'ān and *sunnah*. This is the ideology to which Hamidullah so strongly commits himself.

Hamidullah has personally exemplified this ideology and worldview. He writes with commitment and objective detachment and attempts to grasp and master scholarship of all disciplines and types. He incorporates the Qur'ān and *sunnah* to the point that it dominates his works. He also attempts to strictly apply the Qur'ān and *sunnah* in his daily life, striving for a spiritual existence. He has chosen to dedicate his entire life to the search for justice through his literary works. In addition, he has chosen to live a humble life, requesting no biographical works, awards, fame, or glory. He believes that the way for reform is not to imitate other cultures and civilizations, but to grasp the positive aspects they offer and work with them.

Along with Hamidullah's literary and educational pursuits, he struggled for justice and freedom for his people through his political involvement. He represented Hyderabad at the League of Nations in 1946, assisted in the design of the constitution for Pakistan in 1948, and founded and established the Hyderabad Liberation Society in Paris from 1948 to 1967. He chose to remain in France as a stateless refugee, waiting for his dream of regaining occupied Hyderabad to come true so that he could eventually return to his homeland.

Factors that may have motivated Hamidullah to dedicate his life to achieving justice include the events he witnessed in his lifetime, such as the downfall of the Ottoman Empire in 1918, the downfall of his homeland, Hyderabad in 1948, the Nazis



Revolt in Germany in 1939, and World War II from 1939 to 1945. Firsthand experiences of these events, compounded with exile for over 40 years in France, all contributed to the formation of his worldview, one that remarkably calls for peace and harmony among mankind.

The purpose of this study is to understand Hamidullah through his historical and political environment, his political achievements, and his literary works in order to assess his scholarship. However, we return to our primary question: why is Hamidullah not more widely recognized in the American continent? First, it must be noted that there are a number of renowned scholars who have acknowledged Hamidullah in their works on a variety of topics. This illustrates that he is certainly acknowledged and known by the educated elite. Examples of this acknowledgement can be discerned in Maurice Bucaille's *The Bible, the Qur'an and Science* in reference to Hamidullah's *Le Saint Coran*,<sup>3</sup> Muhammad S. El-Awa's *On The Political System of the Islamic State* in reference to Hamidullah's *Majmu'at al-Watha'iq al-Siyasiyah*,<sup>4</sup> Montgomery Watt's "Battle of Badr" entry in the *Encyclopaedia of Islam*, in which Hamidullah is the only Muslim scholar listed,<sup>5</sup> Marcel A. Boisard's *Humanism in Islam* in reference to Hamidullah's *Le Prophète de l'Islam, The Muslim Conduct of State* and five articles relating to Islamic law,<sup>6</sup> Wael B. Hallaq's *Islamic Legal Theories* that refers to Hamidullah as the editor of *al-Mu'tamad fi Usul-al-Fiqh*,<sup>7</sup> Ziauddin Sardar's

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<sup>3</sup> Maurice Bucaille, *The Bible, The Qur'an And Science* (Indianapolis: American Trust Publications, 1979).

<sup>4</sup> Muhammad S. El-Awa, *On The Political System of the Islamic State* (Indianapolis: American Trust Publications, 1980).

<sup>5</sup> Montgomery Watt, "Badr," *Encyclopaedia of Islam*, 2<sup>nd</sup> ed. (Leiden: E.J. Brill, 1960-).

<sup>6</sup> Marcel A. Boisard, *Humanism in Islam* (Indianapolis: The American Trust Publications, 1979).

<sup>7</sup> Wael B. Hallaq, *Islamic Legal Theories* (Cambridge: Cambridge University Press, 1995).

*Muhammad: Aspects of His Biography* that refers to Hamidullah's *Muhammad Rasulallah, The Battlefields of the Prophet* and *Muhammad and the Conquests of Islam*,<sup>8</sup> and many more.

However, the average student of Islam, in the American continent, is unaware of Hamidullah and his literary achievements, let alone his scholarship. Several reasons may explain this situation. First, it is a fact that many of Hamidullah's works are not translated from languages such as French, Urdu, German, Turkish, and Arabic into English. General books utilized in English speaking countries, as textbooks, would focus on topics such as the Qur'ān or the Prophet or Islam. While Hamidullah's *Introduction to Islam* and *The Emergence of Islam* have been translated and used by many, his translation and commentary of the Qur'ān from Arabic to French and his major book on the Prophet, *Le Prophète De l'Islam*,<sup>9</sup> do not have an English editions. Although he has many written articles on the Prophet's life in English, many remain in journals, scattered in libraries. Second, some of his works available in the English language are not properly edited, casting a shadow on his work in the public's opinion. The pages of his books, the covers, especially how they are designed and presented, diminish the status and impact of his literary works. Although it is a popular American saying to not judge a book by its cover, it is a human tendency to do so. Third, one must recognize the fact that Hamidullah is new to the American continent. He did not teach in this part of the world, as he entered it solely for medical treatment in the declining years of his life. On the other hand, people of his homeland, Hyderabad-

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<sup>8</sup> Ziauddin Sardar, *Muhammad: Aspects of His Biography* (Leicester: The Islamic Foundation, 1978).

<sup>9</sup> Muhammad Hamidullah, *Le Prophète De l'Islam*, 4<sup>th</sup> ed. (Paris: J. Vrin, 1979).

Deccan as well as his sojourn in India, Pakistan, France, Germany, and Turkey may have more insight of him, since Hamidullah both lectured and published books in each region. These reasons explain why he is not adequately known among students and the public alike in the Western hemisphere. Many times writers and reformers become famous long after their death, and while Hamidullah could have become better recognized in his lifetime, he remained an intensely private person and abstained from opportunities for fame and glory. This behaviour further contributes to the reason he remains unknown to the public. He simply wished to be understood this way, substituting the knowledge of himself for his literary works and for the causes and concerns that he lived.

Despite the few structural problems present in Hamidullah's works written in the English language, it is not an exaggeration to say that his knowledge of his subject areas is extensive, his research is exhaustive, his style is unique, and the topics of his published literary works are enormously varied. These are all factors that make Hamidullah a scholar of formidable status and prestige in the field of Islamic Studies.

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APPENDIX

The following encompasses a sample of the books and articles written by Muhammad Hamidullah. Various languages that he has written in, as illustrated below, comprise of Arabic, English, French, German, Japanese, Malaysian-Indonesian, Persian, Portuguese, Tamil, Turkish, Urdu, and Yugoslavian. Due to incorrect resources and inaccessibility of Dr. Hamidullah's voluminous literary works, inaccuracies may be present in the current classification system.

Arabic Books

مجموعة الوثائق السياسية للعهد النبوي والخلافة الراشدة، مصر ١٩٤١، ١٩٥٦، بيروت ١٩٦٥.

كتاب النبات للدكتور، قاموس ابجدي من حرف السين الى حرف الياء، ملتقطات من كتب المتأخرين، و يكمل الجزء المطبوع في اوروبا الذي يحتوي المواد من حرف الالف الى الزاي، مصر ١٩٧٣.

تاريخ تطور الدين عند المسلمين، المجلد الاول يحتوي على مكة قبل الاسلام، ومن العهد النبوي الى نهاية العصر الاموي (محاضرات جامعة استانبول)، مخطوطة

اديان العالم و مقارنتها على حدة مع الاسلام، (محاضرات جامعة استانبول)، مخطوطة.

صحيفة همام بن منبه مع مقدمة في تاريخ تدوين الحديث، دمشق ١٩٥٣ . مع الترجمة الاردوية و زيادات في المقدمة، حيدرآباد ١٩٥٥، ١٩٥٦. مع الترجمة الانكليزية و زيادات في المقدمة، حيدرآباد الدكان ١٩٦١، ١٩٧٩.

رسالتان لمحمد بن حبيب البغدادي، كتاب ما جاء اسمان أحدهما أشهر من صاحبه فسميا به، و كتاب الامثال، في مجلة المجمع العلمي العراقي، بغداد، ج ٤، ١٩٥٦.

أنساب الاشراف للبلاذري، ج ١، مصر ١٩٥٩.

كتاب الانواء لابن قتيبة (مع اشتراك الاستاذ شارل بلا)، حيدرآباد الدكان ١٩٥٦.

الذخائر و التحف للقاضي الرشيد بن الزبير، الكويت ١٩٥٩.

المعتمد في اصول الفقه لابي الحسين البصري المعتزلي، مجلدان، دمشق (بيروت) ١٩٦٤ - ١٩٦٥.

كتاب الجواهر في تاريخ البصرة و الجزائر (من الخليج الفارسي) لابن العراق، اسلام آباد ١٩٧٣.

كتاب المبتدأ والمبعت والمغازى لابن اسحاق، (أجزاء)، الرباط ١٩٧٦ (سيرة ابن اسحاق).  
مقدمة على نشرة سنن سعيد منصور، راجع فى المجلد الاول منها، ذابهيل / الهند ١٩٦٨.  
قرآن سيدنا عثمان، طبعة عكسية مصفرة، طادلنيا ١٩٨٠ راجع القسم الانجليزى.  
غياث الامم لامام الحرمين الجوينى، ينتظر الطبع.

#### Arabic Articles

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رومی اور اسلامی ادارہ ہائے خلائی (بزم قانون جامعہ عثمانیہ)

قانون بین الممالک کے اصول اور نظریہ۔ طبع ثانی ۱۳۶۴ھ

عہد نبوی کے میدان جنگ۔ طبع سوم حیدرآباد

عہد نبوی کا نظام حکمران۔ طبع اول دہلی۔ طبع دوم حیدرآباد

رسول اکرمؐ کی سیاسی زندگی

جدید قانون بین الممالک کا آغاز (ترجمہ از فرانسسی)

اسلامی اصول قانون اور نظریہ دستوری کا ارتقاء (ترجمہ انگریزی)

امام ابوحنیفہ کی تدوین قانون اسلامی

شرح قانون شہادت سرکار عالی

منشور اتوام متحدہ و دستور بین الممالک عدالت انصاف

آزاد حیدرآباد۔ طبع اول و ثانی ۱۳۵۹ھ حیدرآباد۔ ثالث ۱۳۶۷ھ حیدرآباد

ٹیلگری

اردو اعراب

تذکرہ شعبہ قانون جامعہ عثمانیہ

النقشہ ہائے تاریخ اسلام۔ حیدرآباد دکن

نقشہ ہائے فقہ و دستور عہد نبوی

آنحضرت اور جوانی طبع دوم دارالادب پاکستان ۶۵/۶ پبلیش ہاؤس، کراچی ۵ (حسام الدین غوری)

امام ابوحنیفہ کی تدوین قانون اسلامی طبع لاہور۔ طبع چہارم حیدرآباد ۱۳۷۶ھ ۱۹۵۷ء

رسول اکرمؐ اور میدان جنگ، ترجمہ سید غلام رضا سعیدی، از انتشارات۔ کتاب فروشی محمدی، طہران، خیابان شاہ آباد، اسفندیار ۱۳۲۶ھ، ۱۳۷۶ھ

مجلہ جمیۃ نبراس الفکر۔ قسطنطنیہ

مترجمہ محمد حبیب اللہ (حیدرآباد دکن) روزہ کیوں؟

خطبات گارساں و تاسی ج ۱ ج ۱۹۷۳ھ نظر ثانی حمید اللہ



”نذرعرشی“ مرتبہ مالک رام، مختار الدین احمد نئی دہلی  
شمس الائمہ السرخسی

سیاسی وثیقہ جات اردو ترجمہ الوثائق السیاسیہ، مترجمہ ابوالکلی امام خان نوشیروی۔ لاہور ۱۹۶۰ء (بحوالہ ماہنامہ البلاغ، کراچی، ج ۱، ۲، ۱۹۶۷ء)  
روزہ کیوں؟ (ترجمہ محمد حبیب اللہ) حیدرآباد دکن طبع دوم  
عہد نبوی کا نظام تعلیم، طبع فہم حیدرآباد دکن  
اسلام و علم از جمال الدین اسدآبادی با مقدمہ پروفیسر حمید اللہ حیدرآبادی  
ایران قبل الطوسی  
روزہ کیوں؟

عہد نبوی کا نظام تعلیم (طباعت دہم) حیدرآباد دکن  
عہد نبوی کا نظام تعلیم  
رسول اکرم کی سیاسی زندگی (طبع ثالث رجدید)  
مقالات گارساں وتاسی

خطبات ارساں وتاسی از حمید اللہ

اسلام، قانون، کارخانہ (توسیمی)

خطبات بہاولپور نظر ثانی شد

عہد نبوی میں نظام حکمرانی، طبع سوم

رویت ہلال ریناچاند (ترجمہ عبداللہ زبیر، مدراس)

عیدین اور ان کے منانے کے اسلامی و جاہلی طریقے

سیرۃ طیبہ پر ڈاکٹر حمید اللہ کے عثمانیہ یونیورسٹی لکچر

ترجمہ عبدالعزیز مال

خطای نامہ

یادگار نمبر بتقریب جشن صد سالہ مدرسہ محمدی (مدرسہ محمدی اور اس کا پس منظر)

نذر مختار، فرانسیسی زبان کی پیدائش میں عربی کا حصہ

خطبات بہاولپور طبع رابع

Urdu Articles

مدراس کی سیر	نوبہال، ہفتہ وار لاہور	V/1, 8.7 1924
شہر حیدرآباد کی سیر	نوبہال، ہفتہ وار لاہور	V/3, 29.7 1924
حیدرآباد ایجوکیشنل کانفرنس	اخبار تعلیم، لاہور	32.2 1926
سلیمیات (اردو رسم الخط و اشتقاق)	ہمایون، ماہنامہ لاہور	August 1926
ایک محتف کی قابل دید چیزیں	معارف، ماہنامہ اعظم گڑھ	Feb 1927
ڈاک کے ٹکٹ	مجلہ عثمانیہ، ماہنامہ حیدرآباد دکن	I/1, Feb 1927
تجارت کا تعلق آنحضرت صلعم اور خلفائے راشدین سے	تجلی، ماہنامہ حیدرآباد	I/1, March 1927
داتۃ الارض (معجزات اور سائنس)	نظام المشائخ، ماہنامہ دہلی	March 1927
جنگ عظیم اور جنگ ترکی و یونان کا درمیانی وقفہ	نظام گزٹ، ہفتہ وار حیدرآباد	9, June 1928
اسلام اور امن و امان (تفسیر قرآن)	تجلی، ماہنامہ دہلی	May 1928
اردو جھنڈی بولی	مکتبہ، ماہنامہ حیدرآباد	June 1928
ٹیپو سلطان اور اردو کی ترقی (فتح المجاہدین کے اقتباسات)	مجلہ عثمانیہ، حیدرآباد	June 1928
بعض نظر انداز حقیقتیں (سیاسیات، حیدرآباد)	نظام گزٹ ہفتہ وار حیدرآباد	20 Aug 1928
یورپ میں ادبی نشاۃ ثانیہ	مکتبہ ماہنامہ حیدرآباد	Sept 1928
ریاست حیدرآباد کی عظمت اور سلطان دکن کا اقتدار	نظام گزٹ ہفتہ وار حیدرآباد	13 جمادی الثانی ۱۳۳۲ II/1
قہرمانیت (ترجمہ، ایمرن Heroism)	مکتبہ، ماہنامہ حیدرآباد	Feb 1929 / فہروری
ایک فرانسسی کا سفرنامہ حیدرآباد (ترجمہ M Petnot)	نظام گزٹ ہفتہ وار حیدرآباد	Feb 1929 / ۲۳ فہروری II/12
ترکی کا یوم لوزان (ترجمہ از ترکی "حلال احمر")	صحیفہ روزنامہ حیدرآباد	19/May 1929 تیر
اسلامی بے چینی کی نفسیات (ترجمہ از فرانسسی رسالہ)	نظام گزٹ ہفتہ وار حیدرآباد	June II/20 1929
۸ویں صدی ہجری میں مصر و شام میں ڈاک کا انتظام (ماخوذ از عربی)	مجلہ عثمانیہ، حیدرآباد	March II/3-4 1929
لیڈی ڈفرن کی سیر لاہور (لیڈی ڈفرن کے انگریزی خطوط کا ترجمہ)	مخزن ماہنامہ لاہور	July 1929
وضوح اصطلاحات (ایک جواب)	زمانہ ماہنامہ کانپور	Sept, 1929
مدرسہ محمود گاداں بیدر	المعلم حیدرآباد	April 1929 / خرداد ۱۳۳۸

عرض حال	الکشافہ (حیدرآباد ہیڈ کوارٹرز)	۲۹/Dec 1930	رجب بہمن
آصف جاہ چہارم	اسکاؤٹ ٹرپ کا مجموعہ مقالات	۱۳۳۹	
آصف جاہ پنجم	تذکار خود مختاری دکن		
آصف جاہ ششم			
سلطان العلوم شاہ دکن			
جہاد حریت و پیام سال نو			
تاریخ تخت نشینی شاہ عثمان			
قومی تمدن کی پائنداری کا معیار (ترجمہ از انگریزی ہرٹ جرنل)			
اسکاؤٹنگ اسلامی ادبیات عالیہ میں			
قلم کی سرگزشت	مکتبہ ماہنامہ حیدرآباد	۱۳۳۹	۱۳۳۹
حیدرآباد اور گول میز کانفرنس (دستوریات)	نظام گزٹ ہفتہ وار حیدرآباد	۱۳۳۹	۱۳۳۹
	III/15	III/15	
مجلس اقوام قسط اول	نظام گزٹ ہفتہ وار حیدرآباد	۱۳۳۹	۱۳۳۹
	III/19	III/19	
مجلس اقوام قسط دوم	نظام گزٹ ہفتہ وار حیدرآباد	۱۳۳۹	۱۳۳۹
	III/20	III/20	
سلطنت مقسط و عمان (انگریزی سے ترجمہ از لندن ٹائمز)	نظام گزٹ ہفتہ وار حیدرآباد	۱۳۳۹	۱۳۳۹
	III/22	III/22	
مشرق میں انقلاب کے لئے روسی تدابیر (ترجمہ از لندن ٹائمز)	نظام گزٹ ہفتہ وار حیدرآباد	۱۳۳۹	۱۳۳۹
بزم تاریخ کی دسویں سالگرہ (جامعہ عثمانیہ)	نظام گزٹ ہفتہ وار حیدرآباد	۱۳۳۹	۱۳۳۹
شمالی ہند کی زبانوں میں ٹی اور ڈی کی زیادتی (ترجمہ از BSOS لندن)	مکتبہ ماہنامہ حیدرآباد	۱۳۳۹	۱۳۳۹
عرض حال + نوٹ	الکشافہ ماہنامہ حیدرآباد	۱۳۳۹	۱۳۳۹
اردو جھنڈی بولی (قسط اول)			
گول میز کانفرنس کی ابتداء (کنگ آر تھر کی تاریخ اور حلف الفضول)	نظام گزٹ ہفتہ وار حیدرآباد	۱۳۳۹	۱۳۳۹
تکبھدرا پر بند	منشور روزنامہ حیدرآباد	۱۳۳۹	۱۳۳۹

ترکی کا حالیہ سیاسی اتار چڑھاؤ	نظام گزٹ ہفتہ وار حیدرآباد	IV/7/22/Oct 1931
حجاج بن یوسف (ترجمہ: Petius کی فرانسیسی سوانح حجاج کا دیباچہ)	نظام گزٹ ہفتہ وار حیدرآباد	IV/7/22/Oct 1931
بہ آفرید (ترجمہ از جرس W2KM)	نظام گزٹ ہفتہ وار حیدرآباد	IV/8/Oct 1931
حیات تمدن (ترجمہ از انگریزی Highest Journal امریکہ)	نظام گزٹ ہفتہ وار حیدرآباد دکن	1931
اداریہ	الکشافہ ماہنامہ حیدرآباد	Nov/ 1/2 1931
اردو مارس (اردو جھنڈی بولی قسط دوم)		
نوٹ اور خبریں		
ٹیپو سلطان کے معاشرتی اصلاحات (نکاح پر اس کے فرمان کا ترجمہ)	نظام گزٹ ہفتہ وار حیدرآباد سا لگرہ	1931 رجب ۱۳۳۹
	خسروی نمبر	
اداریہ	الکشافہ حیدرآباد نذکار خود مختاری نمبر	1931 4-3/1
حیدرآباد وطنی انتظام کا نمونہ (ایک انگریزی کتاب کا خلاصہ)	رجب ۱۳۳۹	
حیدرآباد بین القوامی قانون کے نقطہ نظر سے	مشور روزنامہ حیدرآباد	1931 29/رجب ۱۳۳۹
دفاق ہند میں حیدرآباد کی شرکت	رہبر دکن روزنامہ حیدرآباد	1931 28/Jan/اسفندار ۱۳۳۰
اداریہ	الکشافہ ماہنامہ حیدرآباد	1931 5/Feb/فروری 1/5
کشافہ ہر زمانے میں		
نوٹ اور خبریں		
ہماری رائے میں (کتابوں کی تنقید)		
ٹیپو سلطان ہندو مسلم اتحاد کا نمونہ (ترجمہ اخبار یک انڈیا مضمون والچی گوہندجی دیسائی)		
اداریہ	الکشافہ ماہنامہ حیدرآباد	1931 March/اردی بہشت
ملکی زبان میں تعلیم (ترجمہ از یک انڈیا مضمون گاندھی)		1/6
عہد عثمانی کی حلیف نوازی		
ہماری رائے میں (تنقیدی)		
نوٹ اور خبریں		

سرور کائنات کی حکومت (قسط اول)	جامعہ ماہنامہ دہلی	March 1931
سرور کائنات کی حکومت (قسط دوم)	جامعہ ماہنامہ دہلی	April 1931
اقتدار اعلیٰ کی عام ماہیت (ترجمہ از Lasky گریمر آف پالیٹکس معتدداقساما	نظام گزٹ حیدرآباد	1931 ۵ تیرہ ۱۳۴۰ ف
مکہ معظمہ کالج اور کاروبار (ترجمہ از جرمن ہفتہ وار ادارہ	رہبر دکن روزنامہ حیدرآباد دکن	1931 ۱۳ صفر ۱۳۵۰ھ
نوٹ اور خبریں	الکشافہ ماہنامہ حیدرآباد	1931 خورداد تیرہ ۱۳۴۰ ۱/7-8
کشافہ ہر زمانے میں		
باہر بادشاہ	الکشافہ ماہنامہ حیدرآباد	1931 خورداد تیرہ ۱۳۴۰ ۱/7-8
تری کشافہ		
سیاسی معاشیات (ترجمہ از فرنج)	نظام گزٹ ہفتہ وار حیدرآباد	1931 خورداد تیرہ ۱۳۴۰
		۱/7-8
نہر سوزی کی اسکیم حضرت عمر کے زمانے میں	جبلہ عثمانیہ	1931 خورداد تیرہ ۱۳۴۰
		۱/7-8
اسلام کی ہیبت اغیار کے دلوں میں (Studdet کی انگریزی کتاب کا خلاصہ)	خلیق ماہنامہ حیدرآباد	1931 خورداد تیرہ ۱۳۴۰ ۱/1
چند تاریخی استقبال اور داخلے	نظام گزٹ ہفتہ وار	1931 ۲ شعبان ۱۳۵۰ھ
		۸/ہجرت ۱۳۴۱ ف
ممالک محروسہ سرکار عالی میں انگریزی ڈاک خانے	رہبر دکن حیدرآباد	1932 /Feb یکم فروری ۱۳۴۱
یورپی الفاظ و اعلام کار و املا (اعرابیات)	معارف ماہنامہ اعظم گڑھ	28/2
اٹھارویں موتمر مستشرقین عالم (ترجمہ از فرنج : شکیب ارسلان)	معارف ماہنامہ اعظم گڑھ	29/2
یمن حجاز۔ لبنان۔ شام۔ فلسطین۔ مصر۔ ترکی اور جرمنی سے مکتوبات بنام روزنامہ رہبر دکن حیدرآباد دکن حیدرآباد ۱۹۳۳ تا ۱۹۳۳ء		
ترکی کے حالات جنگ اعظم کے بعد (ترجمہ از جرمن : بیٹکے)	نظام گزٹ ہفتہ وار حیدرآباد	XI/3,4,5
جرمنی اور فرانس کے جامعاتی امتحانات	شہاب ماہنامہ حیدرآباد	

آحضرت کاخط قیصر روم کے نام	معارف ماہنامہ اعظم گڑھ	June/جون
عرب اور حبشہ (کتاب ”حبشہ“ انجمن ترقی اردو، اورنگ آباد کا ایک باب)	معارف ماہنامہ اعظم گڑھ	
عربوں کی جہاز رانی۔ ایک استدراک۔ قسط اول مولف سلیمان ندوی	معارف ماہنامہ اعظم گڑھ	May/June
عربوں کی جہاز رانی۔ ایک استدراک۔ قسط دوم مولف سلیمان ندوی		
عربوں کی جہاز رانی۔ ایک استدراک۔ قسط سوم مولف سلیمان ندوی		
عربوں اور پیرنٹینیوں کے تعلقات قبل اسلام اور ابتدائے اسلام	مجموعہ تحقیقات علمیہ جامعہ عثمانیہ	III
کشمیر کی چٹھی	رہبر دکن روزنامہ حیدرآباد	
دژہ خیبر کی سیر	رہبر دکن روزنامہ حیدرآباد	
ادارہ معارف اسلامیہ کا اجلاس (لاہور میں)	رہبر دکن روزنامہ حیدرآباد	
شعبہ دینیات جامعہ عثمانیہ	نظام گزٹ۔ ساگرہ نمبر	1936 یکم رجب ۱۳۵۵ھ
مکتوبات نبوی کے دو اصول	مجلہ عثمانیہ۔ حیدرآباد	1936 June IX/3
رسول اکرم کی سیرت کا کیوں مطالعہ کیا جائے؟	شائع کردہ صدر مجلس اشاعت سیرت حیدرآباد دکن	1936
اسلامی اور حضری زندگی (ترجمہ از فرانسسی W.Marcais)	رہبر دکن۔ روزنامہ حیدرآباد	1936 ۶/۶/۱۳۳۶ھ
قسط اول، دوم اور سوم		
ادیبوں سے دوہائی	شہاب۔ ماہنامہ حیدرآباد	1936 Oct/آذر ۱۳۳۶ھ
حیدرآباد کی خود مختاری اور اس کا ماضی و حال	مجلہ نظامیہ۔ ماہنامہ حیدرآباد	1937 رجب ۱۳۵۶ھ
عدل گستری ابتدائے اسلام میں (نیز ۹۴)	مجلہ عثمانیہ۔ حیدرآباد	1937 XII/1-2
عہد نبوی کی سیاست خارجہ کے بعض اصول	مجلہ نظامیہ۔ حیدرآباد	1937 ربیع الاول ۱۳۵۷ھ تیر
		۱۳۳۷ھ
اقتدار اعلیٰ کی ماہیت اور اس کا اطلاق مملکت آصفیہ پر	رہبر دکن روزنامہ حیدرآباد	1938 ۲۹/رجب ۱۳۵۷ھ
حقوق شہریت	مجلہ نظامیہ۔ ماہنامہ حیدرآباد	1938 رجب ۱۳۵۷ھ

ترکی میں وق کے ادارے (ترجمہ از ترکی)	ہمدرد صحت - ماہنامہ دہلی	Oct 1938
اقدام دستور مسجل فی العالم، وحیقتہ نبویہ ہمتہ	مؤتمر دائرۃ المعارف العثمانیہ	P 97-124
دنیا کاسب سے پہلا تحریری دستور	مجلہ طیلسانین - سہ ماہی حیدرآباد	July 1939
خود مختاری و آزادی (سیاسیات حیدرآباد)	مجلہ نظامیہ حیدرآباد	۱۳۵۸ھ ۲۹ رجب
انسانیت کی فتح بہمیت اور شیطانت پر (فتح مکہ کی ساڑھے تیرہ سو سالہ سالگرہ)	رہبر دکن - حیدرآباد	۱۳۵۸ھ ۲۲ رمضان
عہد نبوی کی سیاست کاری کے اصول	سیاست - سہ ماہی حیدرآباد	January 1940
ہجرت (نوآباد کاری)	سیاست - سہ ماہی حیدرآباد	July 1940
آزاد قوموں کی ضرورتیں (سیاسیات حیدرآباد)	مجلہ نظامیہ	۱۳۵۹ھ رجب
عہد نبوی کے میدان جنگ	مجموعہ تحقیقات علمیہ جامعہ عثمانیہ	۱۳۳۹ھ اگست VIII
شُبّانیت (اجلاس درنگل)	روندا حیدرآباد ایجوکیشنل کانفرنس رسالہ	June ۱۳۵۰ھ اگست
ایضا		
انجمن ہائے بلاسودی کی اہمیت اور حیدرآباد میں اس کی حالت	مجلہ طیلسانین حیدرآباد	1941
قانون بین الممالک کی تازہ ترقیاں	مجلہ طیلسانین حیدرآباد	۱۳۵۰ھ اگست
اقدام دستور مسجل فی العالم	تقریر مؤتمر دائرۃ المعارف حیدرآباد	1938
عہد نبوی کا نظام تعلیم	معارف - ماہنامہ اعظم گڑھ	Nov 1941
ترک اور ترکی زبان	مجلہ طیلسانین حیدرآباد	۱۳۵۰ھ اگست V, ۱-۷
قرآنی تصور مملکت	معارف - اعظم گڑھ	Dec 1941
شہری مملکت مکہ قسط اول و دوم	معارف - اعظم گڑھ	Jan, Feb 1942
عہد نبوی کا نظام تعلیم	مجلہ نظامیہ حیدرآباد	Feb 1942
عربی حبشی تعلقات اور نو دستياب شدہ مکتوب نبوی بنام نجاشی	مجلہ نظامیہ حیدرآباد	۱۳۶۱ھ رجب الاول
عہد نبوی کی سیاست خارجہ کا شاہکار (صلح حدیبیہ)	سیاست - سہ ماہی حیدرآباد	April 1942
امام ابوحنیفہ کی تدوین قانون اسلامی	مجموعہ مقالات حیدرآباد اکاڈمی	۱۳۶۱ھ IV
کلمۃ الختم لکتاب البحر لابن حبیب		

حکومت اسلامی کے معنی اہ اقساط	رہبر دکن حیدرآباد	۱۲۷۲۳ امرداد ۱۳۵۱ھ	1942
سواحل ہندوستان پر مسلمانوں کا قدظن، از محمد تقی۔ حواشی از حمید اللہ	مجلہ طیلستانیین حیدرآباد	Vf 3-4 June	1942
عہد نبوی کے عربی ایرانی تعلقات	معارف اعظم گڑھ	July	1942
اصل مکتوب نبوی بنام نجاشی کی دستیابی	مجلہ عثمانیہ۔ حیدرآباد	XV , 1-2	1942
جاہلیت عرب کے معاشی نظام کا اثر پہلی مملکت اسلامیہ کے قیام پر	مجموعی مقالات حیدرآباد اکاڈمی	۱۳۶۳ھ	1943
مدراس کی عظیم الشان نمائش تمدن اسلامی	رہبر دکن حیدرآباد	۱۱ رمضان ۱۳۶۳ھ	1943
ایہا	معارف۔ اعظم گڑھ	Oct	1943
ایہا	صدق۔ ہفتہ وار۔ لکھنؤ	Oct	1943
تقویم جلالی	معارف۔ اعظم گڑھ	Dec	1943
نمائش ثقافت اسلامیہ مع جشن نو دسالہ دارالعلوم حیدرآباد	رہبر دکن۔ روزنامہ	Dec	1943
تدوین حدیث	مجلہ نظامیہ۔ حیدرآباد	Oct/Nov آذر ۱۳۵۳	1944
ف			
حیدرآباد کی ایک تعلیمی جوہلی (دارالعلوم کی نو دسالہ سالگرہ)	معارف۔ اعظم گڑھ	Feb	1943
تاریخ ہند میں ملیاری کی اہمیت	نار جیلستان۔ ماہنامہ ٹلجری	May	1944
انجمن ہائے قرضہ بے سودی	معارف اعظم گڑھ	March	1944
اجنبی اقوام کو مراعات خصوصی	مجلہ عثمانیہ حیدرآباد	۱۳۵۶ھ	1944
رسول اکرم کی سیرت کا کیوں مطالعہ کیا جائے؟	درس القرآن۔ ماہنامہ حیدرآباد	جمادی الاول ۱۳۶۳	1944
سیرۃ النبی : مواد اور ماخذ	”	ج ۲	1944
آغاز اسلام کے وقت دنیا کی حالت	”	شعبان	1944
سیرۃ النبی	”	رمضان	1944
کے کی حالت ولادت باسعادت سے قبل	”	محرم ۱۳۶۳ھ	1944
ختم المرسلین کے لئے انتخاب	”	ربیع الاول	1944
ولادت باسعادت	”	ذوالقعدہ	1945
نوعمری	”	محرم ۱۳۶۵ھ	1945



سیرت	”	1945	صفر
جوانی اور روزگار	”	1945	رجب الا نور
سیرت	”	1945	رجب ۲
شادی خانہ آبادی	”	1945	جمادی الاول ۱۳۶۵
سماجی اور شہری زندگی	”	1945	رجب
سیرت	”	1945	شعبان
نبوت کا کلی دور	”	1946	شوال
عہد نبوی میں بین الاقوامی عصبتوں کو دور کرنے کی بعض تدبیریں	سیاست۔ سہ ماہی حیدرآباد	June 1944	
انجمن ہائے قرضہ بے سودی کا مقام تنظیم جدید میں	رہبردکن۔ حیدرآباد صنعتی نمبر	1944	بہمن ۱۳۵۴ ف
حیدرآباد کے نظام زرکی اصلاح اور اعشاری نظام کی ترویج	رہبردکن۔ حیدرآباد صنعتی نمبر	1944	بہمن ۱۳۵۴ ف
تاریخ دکن ترکی ماخذوں سے	روندا دکن ہسٹری کانفرس۔ حیدرآباد	April 1944	
تصادق قوانین کا اسلامی تصور اور عمل	معارف۔ اعظم گڑھ	Feb 1945	
عربوں کی جہاز رانی۔ استدراک (۲)	معارف۔ اعظم گڑھ	Feb 1945	
منشور اقوام متحدہ	مجلہ طیلسانین حیدرآباد	Oct 1945	
عربوں کی جہاز رانی۔ استدراک (۳)	معارف۔ اعظم گڑھ	June 1946	
نظام عالم کی سابقہ کوششیں اور اقوام متحدہ کا نیا منشور	سیاست۔ حیدرآباد	Dec 1945	
اسلامی اصول قانون اور نظریہ دستوری کا ارتقاء (ترجمہ: Macdoval)	روح ترقی۔ ماہنامہ حیدرآباد	Dec 1945-48	
قانون بین الممالک اور قرآن مجید	قرآنی دنیا۔ روزنامہ حیدرآباد	July 1946	۱/۱، ۱۳۶۵
قرآن مجید کے ترجمے مختلف زبانوں میں	”	1946	۲/رمضان ۱۳۶۵
قرآن مجید کے لاطینی ترجمے	”	1946	۳/رمضان ۱۳۶۵
قرآن مجید کے فرانسیسی ترجمے	”	1946	۱۵/رمضان ۱۳۶۵
قرآن مجید کے تراجم۔ فارسی	”	1946	۲/صفر ۱۳۶۶
قرآن مجید کے تراجم۔ انگریزی	”	1946	۲۳/صفر ۱۳۶۶
(خط) مجوزہ مجلس دستور ساز میں اسلام کی نمائندگی		July 1946	

ہمارا عزم حکمرانی	رہبر دکن۔ روزنامہ حیدرآباد	15.Aug 1947
بعثت نبوی کے وقت کی چند عالمگیر گتھیاں اور ان کا اسلامی حل	مجموعہ مقالات حیدرآباد اکاڈمی	IX 1947
کیا ہم بھی ایک زندہ تندرست قوم ہیں؟	اسن۔ ہفتہ وار حیدرآباد	1/7 ۱۳۶۶ Oct 1947
مملکت حیدرآباد الاسلامیہ	الاخوان المسلمون۔ قاہرہ	19 Nov 1947
حیدرآباد کا حق آزادی	عظیم تر حیدرآباد ہفتہ وار حیدرآباد	۱۳۵/۲۸ Jan 1948
		11/1
مملکت حیدرآباد دکن	الشورئی۔ روزنامہ بغداد	11 Sept ۱۱ اریل 1948
فرانس اور حیدرآباد	پرچم۔ ہفتہ وار۔ سالنامہ حیدرآباد	March 1948
اقوام متحدہ اور عدالت بین الممالک	پرچم۔ ہفتہ وار	11/5-6/23 April 1948
دکن کی ایک کثیر جہتی شخصیت (بہار خاں)	اردو ترقی۔ ماہنامہ حیدرآباد	1/7 ۱۳۵ June اردو 1948
پچیس سال پہلے کی باتیں (محمد عبدالرحمن خاں صدر کلیہ جامعہ عثمانیہ)	P.30-32”	1/9-10 ۱۳۵ مہربان 1948
En Exil نی انجر الباریزی	جلا وطنی	بہروران
تاریخ جدید کے چند حیرتناک حوادث	روح ترقی۔ ماہنامہ حیدرآباد	11/4 March 1949
ایک موثر رسم الحظ و اعراب کی ضرورت	قومی زبان۔ پندرہ روزہ کراچی	16 Oct 1949
مکتوب پاکستان	الھدیٰ۔ ہفتہ وار حیدرآباد	1/2 4 June 1948
امام یمن کا خط اہل حیدرآباد کے نام	”	1/4 25 June 1948
قلمروے انڈیا کا نیا دستور	”	1/5 2 July 1948
گورکھا اور نیپال	”	1/10 13 Aug 1948
سیرت النبی	”	1/22 10 Dec 1948
سیرت النبی	”	1/23 17 Dec 1948
سیرت النبی	”	1/24 24 Dec 1948
سیرت النبی	”	1/25 31 Dec 1948
مکتوب ایران	”	1/28 21 Jan 1949
مکتوب روس	”	1/31 15 Feb 1949

مکتوب فلسطین + تاریخ جدید کے چند حیرت انگیز واقعات (نقل از روح ترقی)	”	I/32	4 March	1949
مکتوب شمالی افریقا	”	I/34	18 March	1949
مکتوب لندن	”	II/36	1 Apr	1949
مکتوب دمشق	”	II/1	27 May	1949
مکتوب مصر	”	II/6-7	8 July	1949
مکتوب الجزائر ۱	”	II/10-11	5	1949
			Aug	
مکتوب الجزائر ۲	”	II/12-13	19	1949
			Aug	
مکتوب تونس	”	II/14-15	2	1949
			Sept	
مکتوب مراکش ۱	الہدیٰ۔ ہفتہ وار حیدرآباد	II/18-19	30	1949
			Sept	
مکتوب مراکش ۲	”	II/32-33	6 Jan	1950
مذہبی ایڈارسانی تاریخ عالم میں ۱	”	II/34-35	20	1950
			Jan	
۲ ” ”	”	II/36-37	3 Feb	1950
۳ ” ”	”	II/38-39	17 Feb	1950
۴ ” ”	”	II/40-41	3 Mar	1950
مکتوب انڈونیشیا	”	II/38-39	17 Feb	1950
اسلام پاریس میں (ترجمہ از اسلامک لٹریچر لاہور)	”	II/44-45	31	1950
			Mar	
اسلامی سکول کا دفاع	محاشیات۔ سہ ماہی کراچی	III 4-5	Nov Dec	1949

کتاب النبات مؤلفه ابوحنیفہ دینوری (۱)	معارف۔ اعظم گڑھ	Dec 1949
مراسلت	معارف۔ اعظم گڑھ	May 1950
کیا کرۂ ارض قلابازی لگانے والا ہے؟ (ترجمہ از کانگریس نیشنل ڈبلیو میل پاریس)	مستقبل۔ ماہنامہ کراچی	May 1950
پاکستانی زبانوں کا رسم الخطی وفاق	قومی زبان۔ پندرہ روزہ کراچی	III/72 16 1950
		June
		۲۹ شعبان ۱۳۶۹ھ
دینداری کی کتاب البنات (۲)	معارف۔ اعظم گڑھ	June 1950
سب سے اچھا ساتھی صلی اللہ علیہ وسلم	ساتھی۔ ماہنامہ۔ کراچی	Aug 1950
قانون بین الممالک کا آغاز و ارتقاء	تاریخ و سیاست۔ ماہی کراچی	I/1, April 1951
دانٹے کی نظم ”طربیہ ربانی	معارف۔ اعظم گڑھ	April 1951
فرانس کا دارالحکومت آپیرس		1951
مکتوب حمید (رسم الخط اور الملاپر)	معارف۔ اعظم گڑھ	68/2 : Aug 1951
استانبول کی موثر مستشرقین عالم	معارف۔ اعظم گڑھ	69/3 : March 1952
عہد نبوی کی ایک عظیم الشان یہودی سازش	کاروان۔ ماہنامہ کراچی	II/3 : March 1952
رناں اور جمال الدین افغانی کا مباحثہ	کاروان۔ ماہنامہ کراچی	II/11-12 Nov-Dec 1952
رومی قانون اور اسلامی قانون کے تعلقات پر چند ملاحظیات (ترجمہ از اطالوی۔ تالینو)	معارف۔ اعظم گڑھ	71/1 : Jan 1953
أقدم تالیف فی الحدیث النبوی: صحیفہ ہمام بن منبہ و مکاتبتہ فی تاریخ علم الحدیث	مجلة المجمع العلمی العربی۔ دمشق	28/1: Jan 1953
مولانا روم کی سات سو سالہ برسی	معارف۔ اعظم گڑھ	71/5 May 1953
خلیفہ عمر: اسلام کی قدیم ترین تاریخ کا ایک کردار (ترجمہ از جرمن)	تاریخ و سیاست۔ کراچی	III/5 Aug 1953
فرسۃ النبی فی السلم والحرب: غزوة خندق اور صلحنامہ حدیبیہ کے بعض غیر	فاران کراچی ستمبر ۱۹۵۳ھ	V, 6 Sept 1953

معروف پہلو	معیار۔ حیدرآباد دکن ہفتہ وار	1953
مکتوب برلین	ماہنامہ فاران کراچی	VII/3 June 1954
اسلامی مسائل کا عالمگیر ربط و تلازم	مجلہ المجمع العلمی دمشق	XXIX/3 June 1954
دارم و توت (استدراک)	فاران۔ کراچی	VI,8 Nov 1954
غلبت الروم	ماہنامہ معارف۔ اعظم گڑھ	I/4 Dec 1954
مؤثر مستشرقین عالم (کیسبرج)		2/2 Sept 1955
(نقل)	مجلہ المجمع العلمی	30/4 Oct 1955
شجرۃ الدارم و مزیتھا	المنظر، بغداد	۱۳۷۵/۲ ج IV 1956
تحویل بحری نصر الفرات لارواء شبہ جزیرۃ العرب (مترجم علی محمد سرماوی)	فاران۔ کراچی	1956
جہاد و غزوات		
استدلال حقوق اسلام نسبت بہ حقوق روم (ترجمہ دکتور عبدالغفور فرہادی)		
۱۹۵۶/۱۳۳۳		
حول خاطرة "مع صھیونی"	اسلمون، دمشق	June 1956
رسالتان لایبن حبیب: کتاب ماجاء اسماء احدثها اشھر من صاحبہ فسمیابہ	مجلہ المجمع العلمی العراقی	1956
(۲) من کتاب الامثال		
نظرات فی علاقات الفقہ الاسلامی بالقانون الرومانی (ترجمہ: من مللیانیہ	اسلمون، دمشق	Oct 1956
یلتو)		
المخطوطات العربیہ فی بارلین	مجلہ معھد المخطوطات العربیہ، مصر	II/2, Nov 1956
	القاهرہ	
میونخ میں مستشرقین عالم کی کانگریس	اقدام۔ ہفت روزہ لاہور	27 Oct 1957
مؤثر مستشرقین عالم کا اجلاس میونخ ۱۹۵۷	معارف۔ اعظم گڑھ	Mars 1958
فقہ کی تشکیل اور آغاز کا معتمہ	معارف۔ اعظم گڑھ	Mars 1958
المیزانیہ والضرائب فی عصر النبی صلی اللہ علیہ وسلم (ترجمہ: سعید رمضان)	اسلمون۔ دمشق	Sept 1958
P226-31	چراغ راہ، کراچی	Juin 1958
اسلامی قانون اور بیرونی اثرات		

P232-40	اسلامی قانون اور قانون روما		
P 290-301	اسلامی قانون اور اس کے ماخذ		
P382-98	تدوین قانون اسلامی اور امام ابوحنیفہ		
	جواب سوالنامہ: اسلام کا تصور قانون کیا ہے؟	چراغ راہ، کراچی	July-August 1958
	اسلامی زندگی کی تشکیل و تعمیر میں قانون کا کیا حصہ ہے؟		
	فقہ اسلامی میں جمود کا اصل سبب کیا ہے؟		
	اسلامی قانون کی تشکیل جدید کس طرح ہو سکتی ہے؟		
	پاکستان میں اسلامی قانون کے نفاذ کے لئے کیا اقدامات ضروری ہیں؟		
	قرآن مجید کے فرانسیسی ترجمے	معارف۔ اعظم گڑھ	Dec 1959
	قرآن مجید کے تراجم کی چند گتھیاں	برگ گل کراچی جلد پنجم ۳۵۳ تا ۸۷	
	عربی جہشی تعلقات	ثقافت - لاہور	
الف ۱۳۹، الف ۷۹	اسلام کا طرز حکومت (ترجمہ غلام شرف الدین)	نقارے رب کراچی	Sept 1960
	مؤتمر مستشرقین عالم کا پچیسواں اجلاس ماسکو	معارف۔ اعظم گڑھ	Nov 1960
	مخطوطہ جدیدۃ من انساب الاشراف للبلاذری	مجلۃ معھد المخطوطات العربیۃ	VI, 1-2 Mai-Nov 1960
	استدراک	مجلۃ اللغۃ العربیۃ بدستق	Janv 1961
		36/1,P175-6	
	(خط) قرآن حضرت عثمان	معارف - اعظم گڑھ	March 1961
	گفتار سید جمال الدین دارنست رناں درباری اسلام و علم مخلوطہ	حکمت، قم (ایران)	April 60 1961
	ترجمہ از اصل عربی بفارسی (سید ہادی خسرو شاہی)	ذی قدہ ۱۳۷۹ ۲۳ تا ۳۰	Mai 60
		ذی جمعہ ۱۳۷۹ ۱۸ تا ۲۳	
		شعبان ۱۳۸۰ ۳۵ تا ۳۰	
	سید جمال الدین و افکار او (ترجمہ از مرتضیٰ مدرس چہاردہی)	آئین اسلام، تہران	

۱۹ محرم ۱۳۷۳ ۸ تا ۱۰			
۲۵ صفر ۱۳۷۳ ۱۰ تا ۱۱			
العرفان۔ صیدا۔ لبنان			
جمادی الاول ۱۳۷۵ ج ۳۶			
جمادی الاخر			
حول ذبائح اہل الکتاب	مجلتہ المجمع، مکہ		1961
رسول اکرم کے معاندوں کی نفسیاتی تحلیل	تہذیب الاخلاق		1961
بانک بدون ربح برای قرضہ حسنہ (ترجمہ)	نور دانش تہران مہرداد ۱۳۳۱ شمس	211-3	1962
ڈاکٹر حمید اللہ صدیقی کا مکتوب	فاران۔ کراچی	P.15	1962
			Aug
بنوک القرض بدون ربا (ترجمہ)	المسلمون جہیف		Dec 1963
صنعة الكتابة في عهد الرسول والصحابیة	فکروفن		1964
تواقیات الصوم والصلوة فی المناطق غیر المعتدلة	المسلمون جہیف ولبنان		1964
گارسین و تاسی کے مقالات و خطبات کے تراجم	قومی زبان۔ کراچی		January 1964
مکتوب۔ مکتوب عن فتح الاندلس	المسلمون، جہیف		Mars 1964
القاضی الرشید، مولف کتاب الذخائر والحقف	معارف۔ اعظم گڑھ		Mai 1964
مکتوب حول ذبائح اہل الکتاب	المسلمون 184-15 Sep.		Sept 1964
اسلامیات کی ایک انگریزی کتاب پر سوال و جواب	صدق لکھنو		25 Sept. 1964
امام سرخسی کی نو سو سالہ برسی	معارف اعظم گڑھ		Sept 1964
عہد نبوی کے واقعات کے لئے تقویمی پیچیدگیاں	اورینٹل کالج میگزین، لاہور		Mai 1964
	Vol.40/3-4		
المسلمون فی الہند (۱-۲-۳)	المجمع، بیروت P.4, P.8, P.6		15 Nov, 1964
			1 Dec, 15 Dec
مولوی عبدالحق مرحوم کی یاد میں	قومی زبان کراچی بیابے اردو نمبر		1964
	P11-14		

قرآن مجید اور عورت	خاتون پاکستان، قرآن مجید نمبر کراچی	1965
هل تا اثر الفقه الاسلامی بالقانون الرومانی؟	الکویت	Feb 1966
الاداصر القومیة فی نظر الاسلام، تغریب السید ضیاء الحسن الندوی	البعث الاسلامی، لکھنؤ	XI,2, P.66-69 1966
		Oct
بانکھای استقر اضی بی مرابحہ (ترجمہ علی اصغر حریری)	وحید، تہران	III/12 Dec 1966
اسلام اور علم ہیئت کے نئے مسائل	معارف۔ اعظم گڑھ	Sept 1967
مؤتمر مستشرقین عالم امریکہ میں	معارف۔ اعظم گڑھ	November 1967
نذکار قرآنی	روزنامہ رہنمائے دکن حیدرآباد	27 Ramadan 1967
	حیدرآباد دکن خصوصی اشاعت تذکار	1387
	قرآن حکیم	p.4
	قرآن مجید اور عورت	P.26
سیریا قانون بین الممالک	فکر و نظر، راولپنڈی	Mai 1968
قرآن مجید کی سالگرہ مبارک	خاتون پاکستان۔ کراچی نزول قرآن	1968
	مجید نمبر ۱۳۸۷	
مکتوب نبوی بنام کسری	البلاغ، کراچی با تصویر	Mai 1968
ایلاف: جاہلیت میں عربوں کے معاشی و سفارتی تعلقات (ترجمہ محمد حسن عسکری)	البلاغ کراچی P.15-28	Juin 1968
عربی رسم الخط انگریزی زبان میں	فاران	Sept 1968
حول موضوع الازی الاسلامی۔ الحجاب	الشباب۔ بیروت	15 Sept 1968
حضرت ابو بکر کی سفارت بنام ہرقل (ترجمہ از محمد حسن عسکری)	البلاغ۔ کراچی	Oct 1968
یورپ میں اوقات صوم و صلوة	فاران۔ والسال	Nov 1968
السیر أوالقانون الدولی	الدراسات الاسلامیہ	Sept 1968



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الشہاب بیروت	الحجاب، رد ثمان	15 Dec 1968
معارف - اعظم گڑھ	امام محمد کی بارہ سو سالہ یادگار وفات ترکی میں	Jun 1969
الشہاب - بیروت	ایوب خان واقفاتیہ طشقند	15 Oct 1969
ماہنامہ پیغام، لندن IV/6,	انگریزی عربی رسم الخط میں	Oct 1969
P.9-11		
الفکر الاسلامی، بیروت		1970
I/7, P.13-28	علم النبات عند المسلمین ومکافئۃ الدینیوی فیہ (۱)	Mai
I/8, P.14-27	” ” (۲)	Jun
I/9, P.13-34	” ” (۳)	Jul
I/10, P.11-18	” ” (۴)	Aug
I/12, P.125-127	تصحیح اغلاط (۵)	O ct
IV/1, 3-27	نسی اور تقدیم ہجری (مترجمہ ڈاکٹر نعیم احمد)	Mars 1970
XXII/7,	ڈاکٹر محمد حمید اللہ کے دو خط	Oct 1970
P.19-25		
	رسول اکرم کی سیرت کا مطالعہ کس طرح کیا جائے؟	Dec 1970
البلاغ کراچی IV/11, P.16-20	سیرت نگار نبوی ابن اسحاق	Feb 1971
عثمانیہ کالج کراچی اردو میگزین	مولانا عبدالحق مرحوم جیسا کہ وہ دور سے نظر آتے تھے؟	P.4-9 1969-70
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P.97-113		
معارف P.148-151	مکتوب حمید	March 1971
P.5-41	کتاب معدن الجواهر فی تاریخ البصرۃ والجزائر الشیخ نعمان بن محمد بن العراق	Dec 1971

محبوب علی خان نظام دکن کی معزولی کی سازش کا قضیہ	ناران کراچی	April 1972
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فی بعض المسائل الفقہ المتأثرہ بعلم الہدیۃ الجدید		
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کتاب احرالی ابي موسى الأشعري رضی اللہ عنہا المشہو	الفکر الاسلامی بیروت	Jun 1972
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کیا اسلامی قانون رومی قانون کا مرہون منت ہے؟	معارف، اعظم گڑھ	Jan 1973
(۱) ترجمہ از انگریزی پروفیسر فخر جبر اللہ	CXI/1, P.41-56	
(۲) مکتوب حمید	CXI/2, P.99-116	
(۳)	CXI/3, P.185-200	
(۴)	CXI/4, P./303-313	
تاریخ قانون میں مسلمانوں کا حصہ (نذر عابد حصہ اردو)	I, P.234-44	1974
(ہل القانون الرومی تا شیر علی الفقہ الاسلامی)		27 Sep-24 Oct 1974
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رسالتہ من الدكتور محمد حمید اللہ باریس	المصنوع، جدہ	Nov-Dec 1975

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تقديم، جري اور عالم اسلام میں ایک دن عید منانے کا مسئلہ	البلاغ، کراچی دسمبر ۱۹۲۵ P.43-48	Dec 1975
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فاران، کراچی ۳۹/۲ ص ۲۶-۲۲	پیرس سے ڈاکٹر محمد حمید اللہ کا مکتوب (ڈوب مرے فرعون کے متعلق)	Sept 1977
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فاران، کراچی P.38-42	کلام اللہ، حکمت و دانش کے چند نئے پہلو	Dec 1978
مجلتہ المجمع العلمی الھدی علی گڑھ، ج ۲۱۴، ۳ ص ۲۷۲-۲۷۳	تحقیق علی رسالۃ الکندی فی کتاب الشفاعات (عہد نبوی کا نظام تعلیم) (نقل من مجلۃ اللغۃ العربیۃ دمشق ج ۲/۵۲ ۱۹۷۷)	July 1978
		1978
		1979
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